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Sanitary and Phytosanitary (SPS) and Related Non-Tariff Barriers to Agricultural Trade

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Summary

Sanitary and phytosanitary (SPS) measures are the laws, rules, standards, and procedures that governments employ to protect humans, animals, and plants from diseases, pests, toxins, and other contaminants. Examples include meat and poultry processing standards to reduce pathogens, residue limits for pesticides in foods, and regulation of agricultural biotechnology. Technical barriers to trade (TBT) cover technical regulations, product standards, environmental regulations, and voluntary procedures relating to human health and animal welfare. Examples include trademarks and patents, labeling and packaging requirements, certification and inspection procedures, product specifications, and marketing of biotechnology. SPS and TBT measures both comprise a group of widely divergent standards and standards-based measures that countries use to regulate markets, protect their consumers, and preserve natural resources.

According to the World Trade Organization (WTO), SPS and TBT measures have become more prominent concerns for agricultural exporters and policy makers, as tariff-related barriers to trade have been reduced by various multilateral, regional, and bilateral negotiations and trade agreements. The concerns include whether SPS and TBT measures might be used to unfairly discriminate against imported products or create unnecessary obstacles to trade in agricultural, food, and other traded goods. Notable U.S. trade disputes involving SPS and TBT measures have included a European Union (EU) ban on U.S. meats treated with growth-promoting hormones and also certain pathogen reduction treatments, and an EU moratorium on approvals of biotechnology products, among other types of trade concerns with other countries. Foreign countries have also objected to various U.S. trade measures.

Multilateral trade rules allow governments to adopt measures to protect human, animal, or plant life or health, provided such measures do not discriminate or use them as disguised protectionism. This principle was clarified in the mid-1990s by WTO members' approval of the Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). The SPS Agreement sets out the basic rules for ensuring that each country's food safety and animal and plant health laws and regulations are transparent, scientifically defensible, and fair. Similarly, in the late 1970s, the Agreement on Technical Barriers to Trade ("TBT Agreement") addressed the use of technical requirements and voluntary standards for a range of traded goods.

In addition, the United States has entered into, or is currently negotiating, numerous regional and bilateral free trade agreements (FTAs) that contain SPS and TBT language. In an effort to resolve perceived intractable trade problems regarding SPS and TBT matters, many in U.S. agriculture and the food industry are supporting efforts to build on and go beyond rules, rights, and obligations in the SPS Agreement and TBT Agreement, as well as beyond commitments in existing U.S. FTAs. The U.S. meat and poultry industry initially proposed efforts to adopt tougher WTO rules for animal health regulations as part of the ongoing Trans-Pacific Partnership (TPP) negotiations. These concepts were later reinforced by recommendations from U.S. and EU trade officials involved in the ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations. These efforts are referred to as WTO-Plus rules, SPS-Plus, and TBT-Plus rules.

In Congress, which must approve legislation if a trade agreement is to be implemented, many Members are interested in how a trade agreement might address SPS and TBT matters. Many remain concerned that countries are turning to non-tariff measures, such as SPS and TBT measures, to protect their farmers from import competition. U.S. rights and obligations regarding SPS and TBT measures are also relevant to regulations affecting imported food.

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Technical barriers to trade (TBTs) cover both food and non-food traded products. TBTs in agriculture include SPS measures, but also include other types of measures related to health and quality standards, testing, registration, and certification requirements, as well as packaging and labeling regulations. TBT measures address technical characteristics of products, such as process and product standards, technical regulations, product environmental regulations, and voluntary procedures relating to health, sanitary, and animal welfare, but also inspection procedures, product specifications, and approval and marketing of biotechnology.

This report broadly refers to SPS and other types of technical requirements, including TBTs in food production, as "SPS/TBT measures." SPS/TBT measures span several broad categories (see text box below), and may vary widely depending on the commodity and importing country. Overall, SPS/TBT measures comprise a group of widely divergent standards and standards-based measures that countries use to regulate markets, protect their consumers, and preserve natural resources, but that can also be used to discriminate against imports in favor of domestic products. Specific examples in agriculture include meat and poultry processing standards to reduce pathogens, residue limits for pesticides in foods, fumigation requirements for grains and wood packaging materials to kill pests, labeling and marketing standards, food safety protocols, and regulation of agricultural biotechnology. This has resulted in a variety of formal trade disputes as well as ongoing trade concerns between the United States and its trading partners.

The United States has initiated several formal trade disputes regarding SPS/TBT measures that have been elevated for review and dispute resolution within the World Trade Organization (WTO). Some high-profile trade disputes include U.S. concerns about the European Union's (EU's) ban on U.S. meats from livestock treated with growth-promoting hormones, the EU's restrictions on chemicals used to treat U.S. poultry, and the EU's moratorium on approvals of biotechnology products. Other disputes have involved U.S. complaints about testing and inspection requirements, among other SPS/TBT measures, applied in other countries. Foreign countries also have objected to various U.S. trade measures. This report describes formal challenges involving SPS/TBT that the United States has brought against some U.S. trading partners, which have resulted in trade disputes that have been, or continue to be, reviewed by the WTO.

Not all U.S. trade concerns regarding SPS/TBT measures rise to the level of a formal WTO trade dispute. A full summary of ongoing SPS/TBT trade concerns based on the most recent annual compilation by the Office of the U.S. Trade Representative (USTR) is provided in **Appendix A** at the end of this report.

[1] WTO Agreement on Sanitary and Phytosanitary Measures, Article 2, Basic Rights and Obligations.

Types of SPS/TBT Measures

SPS Measures:

- plant and animal pests and diseases, and disease-carrying and causing organisms in foods, beverages, or feedstuffs (e.g., fire blight, brown rot, canker, potato wart, and fungus in plants; bovine spongiform encephalopathy (BSE, or "mad cow disease"), foot-and-mouth disease, chronic wasting disease, and brucellosis in animals);
- post-harvest treatment and mitigation requirements (e.g., chemical and other treatment options, including fumigation and quarantine);
- import bans on products from specific producing areas (e.g., because of specific pest or disease concerns particular to a region), and import bans on production inputs (e.g., nursery stock, seeds);
- food additives, residues, and contaminants (e.g., maximum residue limits (MRLs) for pesticide residues; limits on veterinary drug residues and use of hormones in meat production);
- product and/or processing specifications (e.g., restrictions on the use of antimicrobials, sulfur dioxide, sorbic acid, potassium sorbate, biotech and genetic materials, wax coating, etc.);
- microbiological contaminants;
- chemical contaminants;
- irradiation and other forms of sanitation measures, including use of antimicrobial rinses on meat;
- agricultural biotechnology (e.g., genetically engineered plants) and animal cloning;
- other types of perceived health risks; and
- various overlapping technical requirements, such as labeling and standards, including Good Agricultural Practices (GAP) or land-use practices, use of third party auditors, etc.

TBT Measures:

- import quotas and administration (such as licensing and auctions), and other administrative requirements (e.g., protocols, risk assessments, waivers, licenses, import tolerances, packaging requirements);
- export limitations and bans;
- food laws, including quality standards, food safety, and industrial standards;
- certification schemes, including organic certification and eco-labeling marketing and label requirements, such as health-related claims and country-of-origin;
- input, process, and product standards, including domestic content and mixing requirements, rules-of-origin requirements;
- packaging standards and labeling requirements;
- laws and import procedures, including media advertising regulations;
- consumer and food safety regulations (e.g., labeling, packaging, pesticide residue testing, nutritional content labeling, and contamination prevention); and
- measures to prevent consumer fraud (e.g., shipping and financial documentation, standards of identity and measurement, etc.).

Source: Compiled by CRS from various sources, including USTR's annual *Report on Sanitary and Phytosanitary Measures* and *Report on Technical Barriers to Trade*, http://www.ustr.gov; various USDA trade reports including USDA, *U.S. Specialty Crops Trade Issues: 2008 Annual Report to Congress*, January 2009; and USDA, *Analyzing Technical Barriers to Trade*, TB-1876, March 1999; F. J. Adcock, "Examining and Reducing Technical Barriers to Trade," CNAS 98-3, October 1998, Texas A&M University.

SPS/TBT Measures and International Trade Rules

Multilateral Trade Agreements

SPS/TBT measures regarding food safety and related public health protection are addressed in various multilateral trade agreements and are regularly notified to and debated within the WTO. International trade rules recognize the rights and obligations of governments to adopt and enforce such requirements.[2] (Present multilateral rules date back to the development and signing of the General Agreement on Tariffs and Trade (GATT) in 1947, which were followed by a number of subsequent negotiating rounds leading up to the establishment of the WTO on January 1, 1995.)[3] These rules are spelled out primarily in two WTO agreements dealing with food safety and animal (sanitary) and plant (phytosanitary) health and safety and with other types of technical product standards in general:

- The Agreement on Sanitary and Phytosanitary Measures (or "SPS Agreement"), which resulted from the Uruguay Round of the General Agreement on Tariffs and Trade (GATT).[4]
- The Agreement on Technical Barriers to Trade ("TBT Agreement"), which also resulted from the Uruguay Round of GATT negotiations as a revision of the agreement of the same name that emerged from negotiations during the Tokyo Round that concluded in 1979.[5]

Both agreements were entered into force on January 1, 1995, as part of the establishment of the WTO, following the Uruguay Round of multilateral negotiations. These agreements establish rules regarding the use of certain human, animal, and plant health protection measures, as well as the technical requirements, standards and procedures intended to ensure such protections are met, for a range of traded goods. These agreements apply only to governmental measures that may directly or indirectly affect international trade.

Although both the SPS and TBT Agreements explicitly recognize the rights of each country to set their own standards, these standards must be science-based and applied only to the extent necessary to protect human, animal or plant health. These standards cannot be arbitrary or used to unjustifiably discriminate domestically or between trading partners. Member countries also are encouraged to observe established and recognized international standards. Improper use of SPS and TBT measures can create substantial, if not complete, barriers to trade when they are disguised protectionist barriers, are not supported by science, or are otherwise unwarranted.

SPS/TBT measures are considered types of non-tariff measures or barriers, and refer to trade policies such as quotas, import licensing systems, sanitary regulations, and other types of

[2] With regard to SPS measures, GATT Article XX allows governments to adopt measures necessary to protect human, animal or plant life or health, provided that they do not arbitrarily or unjustifiably discriminate or use this as disguised protectionism.

[3] WTO is responsible for administering multilateral agreements. As of 2013, 159 countries were WTO members. The Uruguay Round of the GATT was intended to establish transparent and fair trade rules and to eliminate policies that distort and reduce trade among countries. Examples of such policies may be domestic and export subsidies, import tariffs, import quotas, restrictions on foreign investment, and arbitrary and unscientific regulations, among others. It also established procedures for global trade cooperation, such as periodically reviewing individual countries' trade commitments, policies and performance, and for the resolution of trade disputes.

[4] Information is at WTO's website: http://www.wto.org/english/tratop_e/sps_e/sps_e.htm.

[5] Information is at WTO's website: http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm.

prohibitions—other than import tariffs—that may restrict trade.[6] In general, as import tariffs have been reduced to relatively low levels in most countries following multilateral trade negotiations as well as bilateral and regional free trade agreements, non-tariff measures have emerged, in some cases, as significant barriers to international trade.[7]

Other types of recognized non-tariff measures outside of SPS/TBT measures (and therefore not covered in this report) include quantitative restrictions; non-tariff charges and related policies affecting imports; government participation in trade, restrictive practices, and more general government policies; and customs procedures and administrative practices.[8] These types of potential trade barriers are addressed in other WTO agreements and/or processes.

The rules and procedures governing settlement of trade disputes involving SPS/TBT measures within the WTO are spelled out in the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes. (For more information see "Formal SPS/TBT Trade Disputes Involving the United States.")

WTO Agreement on Sanitary and Phytosanitary (SPS) Measures

The SPS Agreement addresses the rights and obligations of WTO member nations regarding health protection measures related to humans, animals, and plants. SPS measures are defined as any measure that a WTO Member applies to:[9]

- protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms, or disease-causing organisms;
- protect human or animal life or health from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs;
- protect human life or health from risks arising from plant- or animal-carried diseases (zoonoses), and from animal or plant life pests, diseases, or disease-causing organisms, or from the entry, establishment, or spread of pests; or
- prevent or limit other damage caused by the entry, establishment, or spread of pests.

[6] Non-tariff measures are often referred to by their abbreviation, NTMs, and also non-tariff barriers, NTBs. See WTO, Glossary, http://www.wto.org/english/thewto_e/glossary_e/glossary_e.htm.

[7] WTO, *World Trade Report 2012*, http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report12_e.pdf.

[8] Within these categories of non-tariff measures are: *quantitative restrictions* (import quotas; export limitations; licensing; voluntary export constraints; exchange and other financial controls; prohibitions; domestic content and mixing requirements; discriminatory bilateral agreements; and countertrade); *non-tariff charges and related policies affecting imports* (variable levies; advance deposit requirement; antidumping duties; countervailing duties; and border tax adjustments); *government participation in trade, restrictive practices, and more general government policies* (subsidies and other aids; government procurement policies; state trading, government monopolies, and exclusive franchises; government industrial policy and regional development; government procurement policies; investment restrictions or requirements; national systems of taxation and social insurance; macroeconomic policies; competition policies; foreign investment policies; foreign corruption policies; immigration policies; and various anti-competitive practices); and *customs procedures and administrative practices* (customs valuation procedures; customs classification procedures; and customs clearance procedures). See compilation reported in J. W. Mattson, W. Koo, and R. D. Taylor, "Non-Tariff Trade Barriers in Agriculture." Report No. 531, North Dakota State University, March 2004.

[9] For more information, see the WTO's website, http://www.wto.org/english/tratop_e/sps_e/sps_e.htm.

In general, *sanitary regulations* apply to animal based products such as meats, poultry, and dairy products to ensure that they meet or exceed specified sanitary standards. *Phytosanitary regulations* apply to fruits, vegetables, bulk commodities, and other plant based products.

The SPS Agreement establishes general requirements and procedures to ensure that governments adopt and apply SPS measures that protect against risks to human, animal, or plant life or health—including food safety regulations and measures to protect domestic crops, livestock, and poultry. The SPS Agreement also explicitly recognizes the rights of governments to adopt regulations and establish the levels of protection from risk they deem appropriate, provided such measures do not unnecessarily restrict trade.[10] Accordingly, the SPS Agreement reaffirms that no WTO member country should be:[11]

> prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade... to improve the human health, animal health and phytosanitary situation in all Members... and noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols.

The SPS Agreement encourages harmonization of SPS measures among WTO member nations, where appropriate.

Under the SPS Agreement member nations are obligated to notify and allow for comments on proposed standards affecting trade, among other obligations relevant to regulations affecting imported foods. The SPS Agreement applies only to SPS measures that may directly or indirectly affect international trade, and does not apply to measures that have no trade effect or are imposed by a private company or trade association.

The Office of the U.S. Trade Representative (USTR) identifies most SPS measures to include:[12]

> all relevant laws, decrees, regulations, requirements, and procedures including, among others: end product criteria; processes and production methods; testing, inspection, certification, and approval procedures; quarantine treatments, including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures, and methods of risk assessment; and packaging and labeling requirements directly related to food safety.

Key principles and provisions of the SPS Agreement are described in **Appendix B**.

The SPS Agreement established a Committee on Sanitary and Phytosanitary Measures ("SPS committee"[13]) that provides for a periodic review of the agreement's operation and implementation. The first review was conducted in 1999, with subsequent reviews in 2005 and 2010.[14] During these reviews, the committee discussed at length the range of SPS issues and

[10] USTR, *Report on Sanitary and Phytosanitary Measures*; and D. Roberts, and D. Roberts, and K. DeRemer, *Overview of Foreign Technical Barriers to U.S. Agricultural Exports*, ERS Staff Paper. No. 9705, March 1997.

[11] Preamble of the SPS agreement: http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

[12] USTR, *Report on Sanitary and Phytosanitary Measures*, http://www.ustr.gov/sites/default/files/2013%20SPS.pdf.

[13] The agreement establishes a Committee on Sanitary and Phytosanitary Measures ("SPS Committee") to provide a forum for information exchange, to periodically review implementation of the agreement and governments' compliance with it, to monitor progress in global harmonization of standards, and to work closely with the appropriate technical organizations on SPS matters.

[14] WTO, Committee on Sanitary and Phytosanitary Measures, *Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures*, March 1999, June 2005, and May 2010.

proposals, from equivalence, transparency, and harmonization in standards among countries to technical assistance and special and differential treatment for development countries and dispute resolution. The reports include recommendations on each of these topics. Also discussed at the second review were specific trade-related SPS concerns raised by WTO members, cooperation within the three standard-setting bodies (Codex, OIE, and IPPC, see section "International Standard Setting Organizations"), and clarification of terms and SPS provisions, among other topics. Within other articles of the agreement are provisions that permit developing countries to delay compliance with SPS measures affecting imports.

At the time of the second review, the committee reported that some WTO members were "still in the process of adjusting to and implementing the new disciplines." The committee review stated that the SPS Agreement "is serving its purpose to the benefit of both importing and exporting [member countries]" and that no member country "has proposed changes to the basic provisions of the SPS Agreement, or questioned its science-based requirements, the encouragement of harmonization with international standards, or the obligations for transparency."[15] Other information related to the committee's periodic reviews is in section "SPS/TBT Trade Concerns Raised at the WTO."

WTO Agreement on Technical Barriers to Trade

The TBT Agreement addresses the rights and obligations of WTO member nations regarding "standards-related measures" intended to protect against human, animal, or plant life and the environment, and to ensure the quality of traded goods and prevent deceptive practices.[16] At the same time, the TBT Agreement recognizes that:[17]

> no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

Under the agreement, "standards-related measures" include standards, technical regulations, and conformity assessment procedures, and apply with respect to products and related processes and production methods. Technical regulations and standards establish a product's specific characteristics—such as its size, shape, design, functions, and performance, or the way it is labelled or packaged before it is available for sale. Standards are approved by a recognized organization and generally are voluntary, whereas technical regulations are mandatory. Conformity assessment procedures refer to certain technical procedures—such as testing, verification, inspection, and certification—which confirm that a product meets the requirements of the regulations and standards.

The TBT Agreement covers "all technical requirements, voluntary standards and the procedures to ensure that these are met ... , except when these are SPS measures as defined by the SPS Agreement."[18] TBTs also include related health and quality standards, testing, registration, and certification requirements; safety and industrial standards and regulations; conformity

[15] G/SPS/36, June 2005, p. 2.

[16] USTR, *Report on Technical Barriers to Trade*; and D. Roberts, and D. Roberts, and K. DeRemer, *Overview of Foreign Technical Barriers to U.S. Agricultural Exports*, ERS Staff Paper. No. 9705, March 1997.

[17] Preamble of the TBT agreement: https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

[18] WTO, "SPS and TBT Measures," http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c1s4p1_e.htm.

assessments;[19] and packaging and labeling regulations, including trademarks; quarantines; and advertising and media regulations.[20]

The TBT Agreement establishes rules on "developing, adopting, and applying voluntary product standards and mandatory technical regulations as well as conformity assessment procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations," thus helping to distinguish "legitimate standards-related measures from protectionist measures, and ensure that testing and other conformity assessment procedures are fair and reasonable."[21]

Under the TBT Agreement member nations are obligated to notify and allow for comments on proposed standards affecting trade, among other obligations relevant to regulations affecting imported foods (such as developing standards-related measures through transparent processes, and to base these measures on relevant international standards where effective and appropriate). The agreement contains a so-called "Code of Good Practice for the Preparation, Adoption, and Application of Standards," which applies to voluntary standards.

TBTs are widely divergent measures that countries use to regulate markets, protect their consumers, and preserve natural resources, but which can also discriminate against imports in favor of domestic products.

The TBT Agreement also established a committee for members to consult on matters regarding the agreement, which has also conducted a series of reviews of the TBT Agreement.[22] Key principles and provisions of the TBT Agreement are described in **Appendix C**.

U.S. Free Trade Agreements

Bilateral and regional free trade agreements (FTAs) between the United States and other countries also address SPS and TBT matters. In general, such provisions in previously enacted FTAs have not been as extensive as those in the WTO SPS and TBT Agreements. **Table 1** lists some of the SPS-specific provisions in U.S. free trade agreements. These FTAs also include provisions that address TBTs as well. More recently, the United States has entered into free trade negotiations that could go beyond provisions in existing FTAs with regard to SPS and TBT matters.

[19] For example, activities such as certification, testing and inspection that may be required by to ensure a company's products and production processes meet minimum health and safety standards. See Annex 1 of the TBT Agreement for more detailed definitions regarding technical regulations, standards, and conformity assessments. These definitions apply only with respect to products and related processes and production methods, not to services.

[20] See, for example, USTR, *National Trade Estimate Report on Foreign Trade Barriers*, http://www.ustr.gov/; Organization for Economic Co-operation and Development (OECD), "Looking Beyond Tariffs: The Role of Non-Tariff Barriers in World Trade," 2005; and A. V. Deardorff and R. M. Stern, "Measurement of Non-Tariff Barriers," OECD Working Papers, as reported in J. W. Mattson, W. Koo, R. D. Taylor, "Non-Tariff Trade Barriers in Agriculture," Report No. 531, North Dakota State University, March 2004.

[21] USTR, *Report on Technical Barriers to Trade*; and D. Roberts, and D. Roberts, and K. DeRemer, *Overview of Foreign Technical Barriers to U.S. Agricultural Exports*, ERS Staff Paper. No. 9705, March 1997.

[22] The TBT Committee annually reviews implementation and operation of the agreement, including periodic review of provisions relating to transparency and recommendations regarding the rights and obligations under the agreement.

North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico (NAFTA) entered into force on January 1, 1994, and contains both SPS and TBT provisions that are nearly as extensive as those in the SPS and TBT agreements.[23]

NAFTA text relating to SPS matters is contained within Chapter Seven (Agriculture and Sanitary and Phytosanitary Measures). NAFTA's SPS agreement imposes disciplines on the development, adoption, and enforcement of SPS measures to protect human, animal, or plant life or health from risks arising from animal or plant pests or diseases, food additives, or contaminants. NAFTA affirms the right of each country to establish the level of SPS protections that it considers appropriate and provides that a NAFTA country may achieve that level of protection through SPS measures that are based on scientific principles and a risk assessment; are applied only to the extent necessary to provide a country's chosen level of protections; and do not result in unfair discrimination or disguised restrictions on trade (Article 712).[24] NAFTA also established a Committee on Sanitary and Phytosanitary Measures to facilitate the enhancement of food safety and SPS conditions as well as activities relating to international standards and equivalence, and to provide for technical cooperation and consultation on specific bilateral issues (Article 722).

NAFTA text relating to TBT matters is contained within Chapter Nine (Standards-Related Measures). The agreement's TBT provisions apply to standards-related measures under the TBT Agreement and all other international agreements, including environmental and conservation agreements, other than those covered by SPS provisions. NAFTA affirms the right of each country to "adopt, maintain or apply any standards-related measure, including any such measure relating to safety, the protection of human, animal or plant life or health, the environment or consumers, and any measure to ensure its enforcement or implementation," as long as such measures are non-discriminatory and do not result in unnecessary obstacles to trade (Article 904). NAFTA also established a Committee on Standards-Related Measures (Article 913).

Table 1. Sanitary and Phytosanitary (SPS) Provisions in FTAs

Agreement	SPS Provisions
North American FTA: NAFTA, between United States, Canada, and Mexico; entered into force 1/1/94.	SPS provisions contained in Section B of Chapter Seven, Agriculture and SPS Measures; much more extensive than in other bilateral and regional FTAs. Generally parallel provisions in UR SPS agreement. Also contains (in Chapter 20) dispute resolution mechanism for challenging SPS barriers. Those bringing dispute can choose either the WTO or NAFTA process; in SPS cases, respondent can steer dispute into NAFTA arena under certain circumstances.
U.S.-Israel FTA: Earliest U.S. FTA; entered into force 9/1/85.	Article 9 (Health) directs two sides to review their veterinary and plant health rules to ensure they are applied in a nondiscriminatory manner and do not obstruct trade. Calls for consultations over any difficulties to "... allow trade in agricultural products insofar as they do not endanger animal and plant health."
U.S.-Jordan FTA: Entered into force 12/17/01.	No SPS section. However, a separate Joint Statement on WTO Issues encourages consultations on SPS equivalence.

[23] P.L. 103-182. Examples of the reported types of non-tariff barriers to U.S. agricultural products are provided in M. E. Bredahl and E. Holleran, "Technical Regulations and Food Safety in NAFTA," *Proceedings of the 3rd Agricultural and Policy Information Workshop*, 1997. Also see CRS Report R42965, *NAFTA at 20: Overview and Trade Effects*.

[24] USDA, "NAFTA Agricultural Fact Sheet: Sanitary/Phytosanitary," November 18, 2005.

Agreement	SPS Provisions
U.S.-Singapore FTA: Entered into force 1/1/04.	No SPS section, but declares in preamble both parties' commitment to reduction of technical and SPS barriers to trade.
U.S.-Chile FTA: Entered into force 1/1/04.	Chapter Six reaffirms both parties' rights and obligations under WTO SPS agreement. Establishes bilateral committee to enhance understanding of each other's SPS measures and to consult extensively and regularly on SPS matters.
U.S.-Australia FTA: Entered into force 1/1/05.	Chapter VII reaffirms both parties' rights and obligations under WTO SPS Agreement; establishes committee like that in Chile FTA. Further directs USDA-APHIS and counterpart, Biosecurity Australia, to chair standing technical working group intended to address, on an ongoing basis, all trade-related SPS matters that arise during each country's rulemaking and risk assessment processes. Side letters agree to cooperate on securing science-based international standards on BSE.
U.S.-Morocco FTA: Entered into force 1/1/06	Chapter 3-B reaffirms rights and obligations of both parties under the WTO SPS agreement. No SPS committee. Side letter intended to facilitate exports of U.S. beef and poultry by addressing Morocco's concerns about antibiotics and other substances in beef and poultry.
U.S.-Dominican Republic (DR)-Central American FTA: Between the U.S. and Costa Rica, Guatemala, El Salvador, Nicaragua, DR, and Honduras; entered into force for El Salvador 3/1/06; Honduras and Nicaragua, 4/1/06; Guatemala, 7/1/06; DR, 3/1/07; and Costa Rica 1/1/09.	DR-CAFTA reaffirms all parties' rights and obligations under WTO SPS agreement, establishes standing SPS committee like that in the Chile and Australia agreements, but further specifies which agencies in each country to be represented. Side letters with Costa Rica and El Salvador agree to cooperate with the United States on scientific and technical work to achieve market access for poultry. U.S. side letter with DR states that the DR "shall not grant or deny import licenses based on SPS concerns, domestic purchasing requirements, or discretionary criteria. [DR] shall enforce any SPS measures that it imposes separately from its import-licensing system."
U.S.-Bahrain FTA: Entered into force 8/1/06.	SPS chapter (Six) reaffirms two countries' rights and obligations under the WTO SPS agreement. No SPS committee.
U.S.-Oman FTA: Entered into force 1/1/09.	Reaffirms both parties' rights and obligations under WTO SPS agreement. No SPS committee.
U.S.-Peru Trade Promotion Agreement entered into force 2/1/09. **U.S.-Colombia Trade Agreement** entered into force 5/15/12.	Chapter Six in both agreements reaffirms parties' rights and obligations under the WTO SPS agreement and creates a standing committee to address SPS matters. Each has a series of SPS side letters attached to agreement.
U.S.-Panama FTA: Entered into force 10/31/12.	Chapter Six reaffirms two countries' rights and obligations under the WTO SPS agreement and creates a standing committee to address SPS matters. In a separate SPS agreement, Panama is to accept equivalency of the U.S. meat and poultry inspection system; to provide access for all U.S. beef and poultry, and related products, on the basis of accepted international standards; to streamline import documentation requirements for U.S. processed foods; and to affirm recognition of the U.S. beef grading system, among other things.
U.S.-South Korea FTA: Entered into force 3/15/12.	Chapter Eight reaffirms two countries' rights and obligations under the WTO SPS agreement and creates a standing committee to address SPS matters. (The FTA does not directly address the reopening of Korea to U.S. beef, which was banned in Dec. 2003 due to BSE concerns.)

Sources: USTR (http://www.ustr.gov/trade-agreements/free-trade-agreements); CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*.

Notes: Although not shown here, most FTAs also include general provisions that address TBT measures.

Other Existing FTAs

Since NAFTA entered into force in 1994, the United States has successfully negotiated several FTAs (with Jordon, Singapore, Chile, Australia, Morocco, El Salvador, Honduras, Nicaragua, Guatemala, Dominican Republic, Costa Rica, Bahrain, Oman, Peru, Colombia, Panama, and South Korea; see **Table 1**). Each of these FTAs address SPS and TBT matters in some way. However, compared to NAFTA, subsequent FTAs do not address SPS and TBT matters as extensively and also do not address any specific SPS or TBT disputes or issues. Instead, subsequent FTAs generally reference each party's rights and obligations under the WTO SPS Agreement and TBT Agreement, and some FTAs establish standing committees to consult on and resolve problems on an ongoing basis.[25] These FTAs also do not establish any dispute settlement procedures to address disputes related to SPS and TBT measures. In some cases, U.S. negotiators have taken advantage of the negotiating sessions leading up to an agreement, or the subsequent ratification and implementation period, to raise and attempt to resolve certain outstanding issues.

For example, in the U.S.-Australia FTA, in addition to language reaffirming the parties' commitments to their SPS and TBT obligations, the FTA contains a separate chapter on SPS Measures (Chapter 7 of the FTA) establishing an SPS Committee and also a standing technical working group on animal and plant health (Article 7.4; Annex 7-A). The working group is intended to provide a forum to resolve specific bilateral animal and plant health matters to facilitate trade, and engage in risk assessment and regulatory processes, among other matters.[26] During the U.S.-Australia FTA negotiations, U.S. officials also secured a commitment from Australia that it would work to ease inspection procedures that have impeded U.S. imports of pork, citrus, apples, and stone fruit. The FTA also includes side letters where the United States and Australia agree to cooperate on securing science-based international standards on bovine spongiform encephalopathy (BSE, or "mad cow" disease).[27] Similar side letters have accompanied recent FTAs with Latin American countries.

Ongoing FTA Negotiations

In an effort to resolve perceived obstacles in trade regarding SPS and TBT matters, many in U.S. agriculture and the food industry are supporting efforts by U.S. negotiators to build on and "go beyond" the rules, rights, and obligations in the WTO SPS Agreement and TBT Agreement, as well as beyond commitments in existing U.S. FTAs. These efforts are referred to as "WTO-Plus" rules, or alternatively, as "SPS-Plus" and "TBT-Plus" rules. The U.S. meat and poultry industry initially proposed efforts to adopt tougher WTO rules for animal health regulations as part of the Trans-Pacific Partnership (TPP) negotiations. These concepts were later reinforced by recommendations from U.S. and EU trade officials involved in the Transatlantic Trade and Investment Partnership (TTIP) negotiations.

[25] The U.S.-Jordan FTA and U.S.-Singapore FTA do not contain separate SPS sections; however, the FTA with Jordan provides for a separate Joint Statement on WTO Issues encouraging consultations on SPS equivalence, and the preamble in the FTA with Singapore calls for a commitment to reduce technical and SPS barriers to trade.

[26] See, for example, USDA, Animal and Plant Health Inspection Service (APHIS), "Special focus: SPS Issues and Free Trade Agreements," July 2004.

[27] See, for example, report by the Australian Department of Foreign Affairs and Trade, "Australia – United States Free Trade Agreement," Guide to the Agreement, 1st Ed., March 2004, p. 23.

Trans-Pacific Partnership

The Trans-Pacific Partnership (TPP) is a proposed regional FTA being negotiated among the United States and several countries of the Asia-Pacific region—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.[28]

A major item in the TPP negotiations on agricultural goods is how to address SPS matters. In a May 2012 white paper, the American Meat Institute and National Chicken Council called for including a "'WTO-Plus' SPS chapter ... , an agreement that strengthens and reinforces the rules and disciplines" of the WTO SPS Agreement "and underscores the importance of science-based regulation."[29] To address concerns such as "unnecessarily trade-restrictive measures that are not science-based" and new measures that "do not conform to science-based international standards" or are based on the use of "questionable testing methods to enforce standards," among other concerns, the May 2012 white paper makes several recommendations. It recommends that the TPP agreement strengthen requirements regarding risk assessment and risk management; reinforce the WTO rule that requires regulators to select the least-trade-restrictive of available risk management options; promote trade-facilitating measures such as equivalence, recognition of inspection systems, and harmonization of export certificates; require parties to provide an adequate grace period before implementing new, nonemergency measures; enhance transparency; and strengthen the role of science-based international standards and promote the harmonization of standards, among other recommendations. "Most importantly, these WTO-plus provisions must be fully enforceable under the agreement."[30] Several Members of Congress have called for the inclusion of "effective and enforceable rules" to strengthen the role of science in resolving trade differences.[31]

Supported by other U.S. agriculture and food groups,[32] U.S. negotiators proposed an SPS chapter that lays out more detailed commitments relating to human health and animal and plant safety issues in ways that go beyond rules in the WTO SPS Agreement.[33] Reports indicate that USTR has tabled legal text (to be resolved by higher-level officials towards the conclusion of the negotiations) that would establish both a "consultative mechanism" to address SPS disputes that arise and a "rapid-response mechanism" designed to quickly resolve SPS barriers that block shipments of perishable products.[34] Other U.S. proposals have included calls for increased transparency, establishing a timeline for carrying out science-based risk assessment, requiring risk assessments be based on relevant scientific data, and consistency with international guidelines,

[28] See CRS Report R42694, *The Trans-Pacific Partnership (TPP) Negotiations and Issues for Congress.*

[29] American Meat Institute (AMI), "Trans-Pacific Partnership Negotiations, Dallas Round, Negotiations Regarding Disciplines on Sanitary and Phytosanitary (SPS) Measures," May 2012. Also see "US meat groups back tougher SPS rules in Pacific trade," *Food Chemical News*, May 21, 2012.

[30] Ibid. See also "TPP's Biggest Benefit for Agriculture is Binding SPS Rules, Stallman Says," *Inside U.S. Trade*, November 16, 2012.

[31] Letter to USTR Ron Kirk from Members of the House Agriculture Committee and the House Ways and Means Committees, August 3, 2012.

[32] The white paper is also signed by the American Farm Bureau Federation, American Potato Trade Alliance, American Soybean Association, Corn Refiners Association, Grocery Manufacturers Association, National Corn Growers Association, National Milk Producers Federation, National Oilseed Processors Association, National Pork Producers Council, National Potato Council, Pet Food Institute, USA Poultry & Egg Export Council, USA Rice Federation, US-ASEAN Business Council, U.S. Dairy Export Council, U.S. Grains Council and U.S. Wheat Associates.

[33] "Agriculture, Food Industry Seek WTO-Plus Rules for TPP SPS Chapter," *World Trade Online*, May 16, 2012.

[34] "New U.S. SPS Text Contains "Rapid-Response" Tool for Perishable Goods," *World Trade Online*, May 21, 2013; and J. Murphy, "GMA Explores Rapid Resolution for Food Disputes in TPP," *Food Chemical News*, February 8, 2013.

among other proposals.[35] Many in the U.S. agriculture industry have criticized the Administration's efforts to address SPS matters in the TPP negotiations as insufficient.[36]

Some TPP countries that are major agricultural exporters appear to favor a dispute settlement process for SPS obligations.[37] Others have expressed criticism of certain U.S. policies, such as country of origin labeling requirements. Recent reports indicate that the United States may be backing off its earlier position of opposing dispute settlement for SPS rules.[38]

Transatlantic Trade and Investment Partnership (TTIP)

Current negotiations between the United States and EU would establish a free trade area as part of the Transatlantic Trade and Investment Partnership (TTIP).[39] However, given major regulatory differences and non-tariff barriers between the United States and the EU, particularly regarding SPS matters, some have expressed concern about whether the TTIP would be able to address such concerns, or whether the agreement might exclude agriculture products altogether.[40] Some Members of Congress expect the TTIP negotiations to resolve long-standing trade disputes regarding SPS rules between the two trading blocs, as well as enhance disciplines to address SPS issues and other non-tariff barriers.[41] Major concerns revolve around meat and poultry production and processing methods, specifically involving the U.S. use of beef hormones and ractopamine,[42] pathogen reduction and other treatment technologies, BSE-related regulations, and other plant processing regulations. Other SPS concerns between the U.S. and EU involve the use of biotechnology (genetically modified organisms, or GMOs)[43] and pesticide regulations.

At the same time, U.S.-EU negotiators are working to resolve existing SPS disputes, and both parties have made changes to some aspects of their regulatory regimes in an attempt to facilitate some SPS that are viewed as an obstacle to a U.S.-EU trade agreement.[44] Still, some Members of Congress have expressed concern that U.S. companies will become subject to the EU's regulatory requirements on food and agricultural products, in addition to U.S. requirements.[45] USTR has

[35] "TPP Produces Consolidated SPS Text of U.S., Six Other Proposals," *World Trade Online*, September 11, 2011.

[36] Letters from several U.S. agriculture and food groups to Chairman Devin Nunes, Subcommittee on Trade, Committee on Ways and Means (April 15, 2013) and to Michael Froman, Deputy National Security Advisor for International Economic Affairs (April 15, 2013).

[37] "New U.S. SPS Text Includes Consultative Mechanism, RRM Provisions," *Inside U.S. Trade*, May 24, 2013; "Food, Agriculture Groups Blast U.S. Approach to SPS Disputes in TPP," *Inside U.S. Trade*, May 10, 2013.

[38] "U.S. Shows Flexibility On TPP SPS, Now Open To Dispute Settlement," *Inside U.S. Trade*, March 6, 2014.

[39] More information is in CRS Report R43387, *Transatlantic Trade and Investment Partnership (TTIP) Negotiations.*

[40] See, for example, U.S. Senators Worried U.S.-EU Talks Might Not Address Agriculture," *Reuters*, January 24, 2013; letter from several U.S. agriculture and food groups to USTR Ron Kirk, March 4, 2013.

[41] "Baucus, Finance Members Set High Bar for SPS Issues in U.S.-EU Talks," *World Trade Online*, November 6, 2013.

[42] "U.S. Says 'Successful' TTIP Deal Will Eliminate EU Barriers to Meat Exports," *Inside U.S. Trade*, March 11, 2014. Ractopamine is a feed additive that results in more lean meat production in animal raised for meat.

[43] See, for example, letter to USDA Secretary Thomas Vilsack and Acting USTR Demetrios Marantis from 26 farm-state U.S. Senators, May 7, 2013. The letter cites trade barriers to U.S. biotechnology derived crops attributable to regulatory asynchrony, zero tolerance policies, and re-registration requirements. Also see press release by the American Farm Bureau Federation, "U.S.-EU Transatlantic Trade and Investment Partnership Agreement," September 2013.

[44] See, for example, "APHIS Eases Import Restrictions on EU Poultry Products," *Food Chemical News*, April 5, 2013; "APHIS Releases Final BSE Rule, Meeting Longstanding EU Demand To Reopen U.S. Beef Market," *World Trade Online*, November 1, 2013; "EU Lifts Ban on Some U.S. Meat Products in Move Toward Free-Trade Discussions," *Global Insight*, February 2013; and "USDA, "Two Breakthroughs in U.S. Exports to Europe," *GAIN Report* E80004, February 5, 2013.

[45] J. Hatten, "Lawmakers Fear Doubling of Regulations form U.S.-EU Trade Deal," *The Hill*, July 24, 2013.

expressed concerns that the EU is openly promoting its own "production values" and is strategizing to "act as a global standard setter to enhance the competitiveness of European industry."[46] Other groups, as well as some Members of Congress, have expressed concern that a U.S.-EU trade deal and harmonization of regulatory standards could result in overall lower health and environmental standards, particularly SPS/TBT measures, by making them enforceable through a dispute settlement process.[47]

As part of the Administration's formal notification to Congress in March 2013 launching the U.S.-EU trade talks, USTR stated that among its specific objectives in negotiating the TTIP is "to eliminate or reduce non-tariff barriers that decrease market opportunities for U.S. exports, provide a competitive advantage to products of the EU, or otherwise distort trade," such as SPS measures "that are not based on science" as well as "unjustified" TBT measures and "other 'behind-the-border' barriers, including restrictive administration of tariff-rate quotas and permit and licensing barriers, that impose unnecessary costs and limit competitive opportunities for U.S. exports."[48] USTR later stated that differences in the U.S. and EU regulatory and standards approaches have resulted in "unnecessary barriers, raising costs, deterring trade and investment, and negatively impacting our competitiveness and our consumers," and also called on EU regulators to adopt a U.S. rulemaking process based on transparency, participation, and accountability.[49]

Similar to the TPP, many in the U.S. agriculture and food industry who are advocating for TTIP agriculture negotiations are hoping to go beyond current WTO rules on SPS and TBT matters as well as address certain perceived concerns regarding science-based decision-making in trade disputes. For example, a final report submitted by U.S. and EU trade officials as part of the so-called U.S.-EU High Level Working Group on Jobs and Growth (HLWG) to advise TTIP negotiations recommended that the United States and EU seek to negotiate both an "ambitious 'SPS-plus' chapter" and an "ambitious 'TBT-plus' chapter" under TTIP.

The HLWG recommendations call for:[50]

1. an "ambitious 'SPS-plus' chapter, including establishing an on-going mechanism for improved dialogue and cooperation" to address bilateral SPS issues by building on key principles of WTO SPS Agreement, including "requirements that each side's SPS measures be based on science and on international standards or scientific risk assessments, applied only to the extent necessary to protect human, animal, or plant life or health, and developed in a transparent manner, without undue delay."
2. an "ambitious 'TBT-plus' chapter, building on horizontal disciplines in the WTO [TBT Agreement], including establishing an ongoing mechanism for improved dialogue and cooperation for addressing bilateral TBT issues," including the

[46] "USTR attacks Europe's bid to "internationalize" its own standards," *Food Chemical News*, April 08 2010.

[47] Institute for Agriculture and Trade Policy (IATP), "Trade Deal to Undermine Health, Environmental Standards," June 26, 2013; and IATP, "Praises and Peril of the TTIP," October 2013. See also: "House Panel Members Offer Conflicting Views of TTIP Regulatory Goals," *Inside U.S. Trade*, July 25, 2013.

[48] Letter to Speaker John Boehner, U.S. House of Representatives, from Demetrios Marantis, Acting USTR, March 20, 2013.

[49] USTR, Remarks by USTR Michael Froman to the German Marshall Fund, September 30, 2013. Also see "Froman Calls on EU Regulators to be More like their U.S. Counterparts," *World Trade Online*, September 30, 2013.

[50] HLWG, "Final Report of the U.S.-EU High Level Working Group on Jobs and Growth," February 11, 2013. These recommendations were submitted to the Presidents of the United States, European Council, and European Commission.

> goals of "greater openness, transparency, and convergence in regulatory approaches and requirements and related standards-development processes ... , to reduce redundant and burdensome testing and certification requirements, promote confidence in our respective conformity assessment bodies, and enhance cooperation on conformity assessment and standardization issues globally."

The "SPS Plus" and "TBT Plus" concept generally means building on and going beyond the rights and obligations of all WTO members through the WTO's SPS and TBT Agreements. For example, this could mean that the EU and United States would provide for greater transparency and more timely SPS and TBT notifications than required by the WTO, along with—albeit more challenging—some form of "rapid response mechanism" for resolving stoppages of agricultural products at the border and enforcement mechanisms or dispute settlement process.[51]

U.S. agriculture and food groups continue to express concern that ongoing trade negotiations might not adequately address SPS concerns and cover "all significant barriers in a single comprehensive agreement."[52] The U.S. Chamber of Commerce has also expressed the need for "the inclusion of ambitious regulatory provisions" covering "a complete package of all three areas—TBT, SPS, and regulatory cooperation" as part of any agreement.[53] Additionally, several Members of Congress have called for "effective rules and enforceable rules to strengthen the role of science in the marketplace" to resolve international trade differences in the TPP and TTIP.[54]

Working within the framework of the SPS and TBT Agreements, and principles and disciplines of the WTO, among the stated U.S. objectives regarding non-tariff barriers and regulatory issues are:[55]

> greater compatibility of U.S. and EU regulations and related standards development processes, with the objective of reducing costs associated with unnecessary regulatory differences and facilitating trade, inter alia by promoting transparency in the development and implementation of regulations and good regulatory practices, establishing mechanisms for future progress, and pursuing regulatory cooperation initiatives where appropriate

These objectives are alternatively expressed as the need for harmonized standards or convergence in regulatory approaches; regulatory coherence; improved openness; and fewer redundant and/or burdensome testing and certification requirements. Similarly, among the EU's stated objectives of the SPS chapter are to establish regulatory and technical cooperation; improve transparency and discrimination to the adoption and application of SPS measures; and eliminate unnecessary barriers to trade while safeguarding human, animal, and plant health.[56]

Some in the U.S. agriculture and food industry are urging the TTIP agriculture negotiations to address the use and application of the so-called "precautionary principle," which is central to the EU's risk management policy regarding food safety and animal and plant health, as well as the

[51] J. Grueff, *Achieving a Successful Outcome for Agriculture in the EU–U.S. Transatlantic Trade and Investment Partnership Agreement*, International Food & Agricultural Trade Policy Council (IFATPC) Discussion Paper, February 2013; and comments and presentation by Ellen Terpstra, IFATPC, February 27, 2013.

[52] Letter to USTR Ron Kirk from several U.S. agriculture and food groups, March 4, 2013.

[53] See U.S. Chamber of Commerce's website, http://www.uschamber.com/issues/regulatory/precautionary-principle.

[54] Letter to USTR Michael Froman from Members of the House Agriculture Committee and House Ways and Means Committee, August 7, 2013. See also: "Ways & Means, Ag Committee Members Demand SPS Enforceability," *Inside U.S. Trade*, September 5, 2013.

[55] USTR, "U.S. Objectives, U.S. Benefits in the Transatlantic Trade and Investment Partnership: A Detailed View," June 2013.

[56] European Commission, "Sanitary and Phytosanitary Issues: Initial EU Position Paper," December 2013.

EU's practice of taking a generally more risk adverse approach to risk management. Some contend that the EU's use of the precautionary principle contributes to its practice of taking a generally "more risk-averse approach to risk management"[57] and "allows EU regulators to put in place restrictions on products or processes when they believe that scientific evidence on their potential impact on human health or the environment is inconclusive."[58] Many in the United States claim that "science-based decision making and not the precautionary principle must be the defining principle in setting up mechanisms and systems" to address SPS concerns.[59] Other TTIP objectives for some U.S. agricultural and food groups include calls for changes to the EU's approach for approving and labeling biotechnology products.

Many in the EU continue to defend the application of the precautionary principle to a range of agricultural issues,[60] and U.S. agriculture and food groups have expressed concern that "a resolution regarding the TTIP passed by the European Parliament on April 24 [2013] strongly expresses the intent of the EU to maintain the precautionary principle, which would undermine sound science and ultimately the agreement itself."[61] Additional background on the use and application of the precautionary principle in international trade is provided in the section of this report titled "Application and Use of "Precautionary Principle"."

In addition, some U.S. groups are calling for changes to EU food and beverage designations that derive from production in a specific geographical location, or so-called geographical indications or GIs. (For more information, see text box). These discussions are not part of the SPS chapter, but are being negotiated as part of the TTIP's intellectual property rights (IPR) chapter.

[57] Testimony by James Grueff of Decision Leaders before the House of Representatives, Committee on Ways and Means, Subcommittee on Trade, May 16, 2013.

[58] "EU Will Not Change 'Precautionary Principle' Through Trade Talks: Official," *Inside U.S. Trade*, May 20, 2013.

[59] G. Marchant et al., "Impact of the Precautionary Principle on Feeding Current and Future Generations," CAST Issue Paper 52-QC June 2013. See also policy statements at the Business Coalition for Transatlantic Trade website.

[60] "European Parliament Back U.S.-EU trade deal talks but Draws "Red Lines," *Food Chemical News*, June 14, 2013; and "EU Will Not Change 'Precautionary Principle' Through Trade Talks: Official," *Inside U.S. Trade*, May 20, 2013.

[61] Letters from several U.S. agriculture and food groups to Michael Froman, Deputy National Security Advisor for International Economic Affairs, May 20, 2013. See also U.S. Food, Ag Groups Want 'Precautionary Principle' On Table in EU Talks," *World Trade Online*, May 22, 2013.

Geographical Indications

Geographical indications (GIs) are geographical names that act to protect the quality and reputation of a distinctive product originating in a certain region. The term is most often, although not exclusively, applied to wines, spirits, and agricultural products. Examples GIs include Parmesan cheese and Parma ham from the Parma region of Italy, Tuscan olive oil, Champagne from the region of the same name in France, Roquefort cheese, and Irish whiskey.

The WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) defines GIs as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin." (Article 22.1) Under the TRIPS Agreement, member countries have committed to providing a minimum standard of protection for GIs (i.e., protecting GI products to avoid misleading the public and to prevent unfair competition) and an "enhanced level of protection" to wines and spirits that carry a geographical indication, subject to certain exceptions.

In the United States, geographical indications are protected under the U.S. Trademark Act (15 U.S.C. §1051 *et seq.*). Section 4 of the Trademark Act (15 U.S.C. §1054) provides for the registration of "certification marks including indications of regional origin." The U.S. Patent and Trademark Office (PTO) defines GIs as "indications that identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin." Examples of GIs from the United States include: "Florida" oranges; "Idaho" potatoes; "Vidalia" onions; and "Washington State" apples. According to the U.S. PTO, "geographical indications serve the same functions as trademarks, because like trademarks they are: source-identifiers, guarantees of quality, and valuable business interests." Establishing a product based on its geography can be complicated, either involving establishing a trademark or a brand name through an extensive advertising campaign.

In the EU, a series of regulations governing GIs was initiated in the early 1990s covering agricultural and food products, as well as wine and spirits. The regulations establish provisions regarding products from a defined geographical area, given linkages between the characteristics of products and their geographical origin. Under the regulations, producers qualify for either a protected geographical indication (PGI) or a protected designation of origin (PDO). For foods, the relevant EU authority overseeing GIs is the Unit on Quality Policy for Agricultural Products and Foodstuffs of the Commission of the European Communities. (Regulation 1151/2012 and Regulation 510/2006 (agricultural products and foodstuffs); Regulation 479/2008 (wine); and Regulation 110/2008 (spirits))

Source: Text of the TRIPS agreement is at WTO's website: http://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm. For more information, see CRS *In Focus*, "Geographical Indications in U.S.-EU Trade Negotiations."

International Standard Setting Organizations

The SPS Agreement and the TBT Agreement both encourage the international harmonization of food standards. Specifically, the SPS Agreement recognizes three international standard setting organizations for "facilitating international trade and protecting public health."[62] These include the Codex Alimentarius Commission (Codex);[63] the World Organisation for Animal Health (OIE);[64] and the International Plant Protection Convention (IPPC).[65] These organizations are often referred to as the "Three Sister" organizations of the WTO. Each of these organizations is

[62] WTO, "The WTO and the FAO/WHO Codex Alimentarius," http://www.wto.org.

[63] See Codex's website (http://www.codexalimentarius.org/). As of year-end 2013, Codex had 186 members.

[64] OIE is based in Paris and still known by its former French abbreviation, OIE (Office International des Épizooties), even though it has been renamed the World Organization for Animal Health. OIE is not part of the United Nations, but is a separate intergovernmental organization that was founded in 1924 under an international agreement. For more information, see OIE's website: http://www.oie.int/index.php. As of September 2013, OIE had 178 members.

[65] See IPPC's website (http://www.ippc.int/). As of September 2013, IPPC had 179 signatories.

directly recognized in the SPS Agreement as the primary "relevant" (or reference) organizations for developing international standards, guidelines, and recommendations on animal health, food safety, and plant health.[66] As stated in the SPS Agreement (Article 3):

> To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist,.... Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

As such, Codex, IPPC, and OIE directly and actively participate in and contribute to discussions of the SPS committee. The TBT Agreement further encourages members to participate in the work of international bodies for the preparation of standards and other procedural guidelines (Articles 2.6 and 5.5).

Prior to the creation of the WTO and negotiation of the SPS and TBT Agreements, the United Nations General Assembly stated as part of a 1985 resolution, *Guidelines for Consumer Protection*:[67] "Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards." Arguably, however, there is no single and categorical obligation for WTO member governments to adopt internationally recognized standards, guidelines, or recommendations.

The United States is a member of the WTO and also a member of Codex, OIE, and IPPC.[68] U.S. government scientists participate actively in these organizations, which meet periodically to discuss current and anticipated threats to human and agricultural health, evaluate SPS-related disputes, and develop common, scientifically based SPS standards. Such standards are voluntary and are intended to provide guidance for countries in formulating their own national SPS measures and, ultimately, to help resolve trade disputes.

Codex Alimentarius Commission

Codex Alimentarius Commission (Codex) is the international food safety organization that develops internationally adopted food standards, guidelines, and codes of practice. Codex operates as part of a United Nations program jointly funded by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO), known as the Joint FAO/WHO Food Standards Programme.[69] Codex was created in 1963 to develop food standards, guidelines, and codes of practice intended to ensure food safety and hygiene, as well as facilitate

[66] See text of the SPS Agreement in the preamble, Articles 3 and 12, and Annex A. Also see WTO, Committee on Sanitary and Phytosanitary Measures, "Relationship with Codex, IPPC and OIE," SPS/GEN/775, May 15, 2007.

[67] United Nations General Assembly, "Guidelines for Consumer Protection," April 16, 1985 A/RES/39/248, http://www.un.org/documents/ga/res/39/a39r248.htm.

[68] The United States is also a member of the North American Plant Protection Organization (NAPPO).

[69] See FAO, http://www.fao.org/about/en/.

international food trade.[70] Codex provides a forum for countries to formulate and harmonize food standards on a global scale. Nearly all countries are members of Codex.[71]

The SPS Agreement identified Codex as the relevant international standard setting organization for food safety. Regarding food safety, Codex sets Maximum Residue Levels (MRLs) for pesticide residues in plant-based foods and for animal drug residues in meat products, and has standards for a range of veterinary drugs.[72]

Codex standards, guidelines, and recommendations are generally regarded as the benchmarks against which "national food measures and regulations are evaluated within the legal parameters" of the WTO agreements, thus giving Codex a key role in helping to resolve some types of trade disputes.[73] Codex standards, guidelines, and recommendations are advisory, not mandatory. However, measures that conform to Codex are generally recognized, under the SPS Agreement, as necessary to protect public health based on available scientific evidence and risk analysis.

Through international negotiations, Codex has formulated standards for specific food commodities, and has also addressed broader areas of concern including pesticide and drug residues, food contaminants and additives, labeling, and food safety. Overall, Codex has developed more than 200 standards covering processed, semi-processed, or unprocessed foods; developed more than 40 hygienic and technological codes of practice; evaluated more than 1,000 food additives and more than 50 veterinary drugs; set more than 3,000 maximum levels for pesticide residues; and specified over 30 guidelines for contaminants.[74] All Codex standards, guidelines, codes of practice, and advisory texts are publicly available at its website.[75]

World Organization for Animal Health

The World Organization for Animal Health (OIE)[76] is responsible for improving animal health worldwide. OIE is not part of the United Nations, but is a separate intergovernmental organization that was founded in 1924 under an international agreement.[77] The SPS Agreement named OIE as the relevant international standard setting organization for animal health, and states that "to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations."[78]

OIE's objectives include developing international standards "to promulgate health standards for the safety of international trade in animals and animal products and animal disease surveillance

[70] See Codex's website (http://www.codexalimentarius.org/about-codex/en/).

[71] Codex currently has 185 members including 184 member countries and EU (considered a member organization). For a country listing, see http://www.codexalimentarius.org/members-observers/en/.

[72] For a current listing, see the Codex Veterinary Drug Residues in Food Online Database (http://www.codexalimentarius.net/vetdrugs/data/index.html).

[73] Joint FAO/WHO Food Standards Programme, *Understanding the Codex Alimentarius*, 3rd Edition, 2006, p. ix. Also see the Commission's website (http://www.codexalimentarius.org/about-codex/en/).

[74] WTO, "The WTO and the FAO/WHO Codex, Alimentarius," http://www.wto.org/.

[75] Listing covers food additives, pesticide and veterinary drug Maximum Residue Levels (MRLs), and other international standards or guidelines (http://www.codexalimentarius.org/standards/en/).

[76] OEI is based in Paris and still known by its former French abbreviation, OIE (Office International des Épizooties), even though it has been renamed the World Organization for Animal Health.

[77] In the 1950s, there was discussion about whether OIE should be dissolved, given that similar work was being done at FAO and WHO. This ultimately did not happen. For more information, see http://www.oie.int/about-us/history/.

[78] See 1998 agreement between WTO and OIE: http://www.wto.org/english/thewto_e/coher_e/wto_oie_e.htm.

(within its WTO mandate)" as well as "contribute to food safety and food security and to promote animal welfare, through a science-based approach."[79] Historically its mandate has been to "prevent animal diseases from spreading around the world."[80] Among its major functions, OIE collects and disseminates information on the distribution and control of animal diseases, coordinates research on contagious animal diseases, and develops international standards for the safe movement of animals and animal products in international trade.

OIE's codes and manuals are intended as reference documents to help countries establish health regulations for the import and export of live animals and animal products, and avoid the spread of diseases to other animals and humans. OIE also helps develop general principles relating to risk analysis methodology, including import risk assessments, veterinary services assessments, zoning and regionalization guidelines, and surveillance and monitoring tools, such as animal identification and traceability.[81]

International Plant Protection Convention

The International Plant Protection Convention (IPPC) is an international treaty for international cooperation in plant protection, intended to "protect cultivated and wild plants by preventing the introduction and spread of pests."[82] IPPC was established in 1952 and is administered by FAO. The SPS Agreement named IPPC as the relevant international standard setting organization for plant health. IPPC allows for the application of measures by governments intended to protect their plant resources from harmful pests (referred to as "phytosanitary" measures) that may be introduced through international trade.[83] IPPC's major functions apply mostly to quarantine pests in international trade, and its standards and policies are aimed to prevent the spread and introduction of pests to plants and plant products. Other IPPC work includes establishing standards on pest risk analysis and developing requirements for the establishment of pest-free areas.

Application and Use of "Precautionary Principle"

The "precautionary principle" (or precautionary approach) allows a country to take "protective action"—including restricting trade of products or processes—if they believe that scientific evidence is inconclusive regarding their potential impacts on human health and the environment.

No universally agreed upon definition of the precautionary principle exists, and many differently worded or conflicting definitions can be found in international law. WTO rules state:[84]

> Member countries are encouraged to use international standards, guidelines and recommendations where they exist. When they do, they are unlikely to be challenged legally in a WTO dispute. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some extent apply

[79] OIE, "Presentation of the World Organisation for Animal Health (OIE)," March 2010.

[80] The 4th Strategic Plan 2006/2010 extended the OIE's global mandate to: "The improvement of animal health all around the world." See http://ec.europa.eu/food/animal/diseases/strategy/docs/OIE-pres_en.pdf.

[81] WTO, "The WTO and the World Organization for Animal Health (OIE)."

[82] IPPC's website (http://www.ippc.int/). As of September 2013, IPPC had 178 members.

[83] WTO, "The WTO and the International Plant Protection Convention (IPPC)."

[84] See WTO, "Glossary Term: Precautionary Principle" and WTO, "Understanding the WTO Agreement on Sanitary and Phytosanitary Measures." These are addressed in Article 5.7, Article 3.3, and the preamble of the SPS agreement.

> the "precautionary principle", a kind of "safety first" approach to deal with scientific uncertainty.

More specifically, the precautionary principle suggests that if scientific evidence is insufficient or inconclusive regarding potential dangers to human, environmental, animal, or plant health of a product or practice, that product or practice should be prohibited if reasonable grounds for concern exist.

The WTO acknowledges that "the need to take precautionary actions in the face of scientific uncertainty has long been widely accepted," particularly in the fields of food safety, and plant and animal health protection. Examples might include a sudden outbreak of an animal disease that is suspected of being linked to imports, which may require a country to impose certain trade restrictions while further information about the source and extent of the outbreak is assessed. The WTO also acknowledges that the SPS Agreement allows countries to use different standards and methods of inspecting products. (For other information see text box below.)

The precautionary principle remains central to the EU's risk management policy regarding food safety and animal and plant health, among other concerns. It was reportedly referenced as part of the 1992 treaty establishing the EU, and its use was further outlined in a 2000 communication and then formally established in EU food legislation in 2002 (Regulation EC No 178/2002).[85] The EU's regulatory definition (Article 7) states:[86]

> In specific circumstances where, following an assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure the high level of health protection chosen in the Community may be adopted, pending further scientific information for a more comprehensive risk assessment.

The EU's 2000 communication outlines guidelines for applying the precautionary principle, including implementation, the basis for triggering a decision to invoke the precautionary principle, and the general principles of application.

Precautionary Principle: SPS Agreement and EU Laws and Regulations

The WTO acknowledges that the SPS Agreement allows countries to use different standards and different methods of inspecting products. The WTO regards the "precautionary principle" as being reflected in the SPS Agreement, specifically in paragraph 6 of the Preamble, Article 3.3, and Article 5.7 of the agreement.

- Paragraph 6 of the Preamble encourages harmonization of national SPS measures with international standards without requiring countries to change their sovereignly determined appropriate levels of health protection.
- Article 3.3 explicitly permits Members to adopt SPS measures which are more stringent than measures based on the relevant international standards.
- Article 5.7 allows a country "to take provisional measures when sufficient scientific evidence does not exist to permit a final decision on the safety of a product or process." If a country imposes a provisional (temporary) SPS measure, it must seek "additional information necessary for a more objective assessment of risk, and must review the SPS measure within a reasonable period of time."

[85] Commission of European Communities, "Communication from the Commission on the precautionary principle," COM(2000) 1, Brussels, February 2, 2000.

[86] Regulation (EC) No 178/2002 of the European Union Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. Other information is at http://eur-lex.europa.eu.

Source: WTO, "Current Issues, 8.2 The Precautionary Principle." See also: United Nations, *Trading Precaution: The Precautionary Principle and the WTO*, November 2005.

In international trade, under EU law, application of the precautionary principle provides for "rapid response" to address "possible danger to human, animal, or plant health, or to protect the environment" and can be used to "stop distribution or order withdrawal from the market of products likely to be hazardous."[87] Although its application may not be used as a pretext for protectionist measures, many countries have challenged as "protectionist" some EU actions that have invoked the precautionary principle.

Several U.S. agricultural and manufacturing groups oppose the EU's application of the principle and argue it allows EU regulations to disregard scientific evidence demonstrating that certain food products and processes are safe, based on evidence from available scientific risk assessments, allowing the EU and other importing countries to engage in disguised protectionism.[88] On the other hand, some advocates believe that the SPS agreement too severely limits use of the principle.[89]

Application of the precautionary principle by some countries remains an ongoing source of contention in international trade, particularly by the United States, and is often cited as a reason why some countries may restrict imports of some food products and processes. A 2013 paper authored by researchers at several U.S. land grant universities and USDA cites the following criticisms of the precautionary principle: (1) the ambiguity and lack of definition of the precautionary principle; (2) the arbitrariness in its use and unprincipled ways in which the precautionary principle has been applied; and (3) application of the precautionary principle is biased against new technologies, such as biotechnology and nanotechnology.[90] The authors conclude that the precautionary principle has become "unworkable and counterproductive."[91] Many U.S. agricultural and food organizations contend the precautionary principle undermines "sound science" and results in "unjustifiable restrictions" on U.S. exports.[92] The stated policy of the U.S. Chamber of Commerce also is to support a "science-based approach to risk management, where risk is assessed based on scientifically sound and technically rigorous standards," and "oppose the domestic and international adoption of the precautionary principle as a basis for

[87] "Summaries of EU legislation," http://europa.eu/legislation_summaries/consumers/consumer_safety/l32042_en.htm.

[88] See, for example, letter from many U.S. agriculture trade associations to Michael Froman, then Deputy National Security Advisor for International Economic Affairs at The White House, May 20, 2013; and statement from U.S. Chamber of Commerce. See also: Council for Agricultural Science and Technology (CAST), "Impact of the Precautionary Principle on Feeding Current and Future Generations" CAST Issue paper number 52, June 2013.

[89] Friends of the Earth International, *Trade and People's Food Sovereignty*, position paper, April 2003. The document also charged that "the Codex is so heavily influenced by food and chemical corporations that the standards it sets may be lower than those already in place in many nations."

[90] G. Marchant et al., "Impact of the Precautionary Principle on Feeding Current and Future Generations," CAST Issue Paper 52-QC June 2013.

[91] Ibid.

[92] See, for example, letters from several U.S. agriculture and food groups to Michael Froman, Deputy National Security Advisor for International Economic Affairs, May 20, 2013.

regulatory decision making."[93] Its strategy aims to "educate consumers, businesses, and federal policymakers about the implications of the precautionary principle."[94]

A 2005 study by the United Nations University recognizes that despite "fundamental differences in perception as to the appropriate role of science and technology in society, ... there must be a mutually acceptable, rational basis for concern that is based on available information when invoking precaution."[95] The report further states: "While science has an important role to play in assessing risk and in informing decision makers on possible approaches to health and environmental concerns, the management of the risks involved invariably falls into the realm of political choice, where determining an acceptable level of risk must take into account a multitude of different considerations."

The study encourages the need for increased bilateral, regional, and multilateral discussion, and notes that unilateral measures adopted by countries without the support of "international standards, multilateral agreements or rigorous risk assessment" are both "economically damaging" and "create skepticism" for other actions where precaution may be truly warranted.

SPS/TBT Trade Concerns Raised at the WTO

SPS Measures

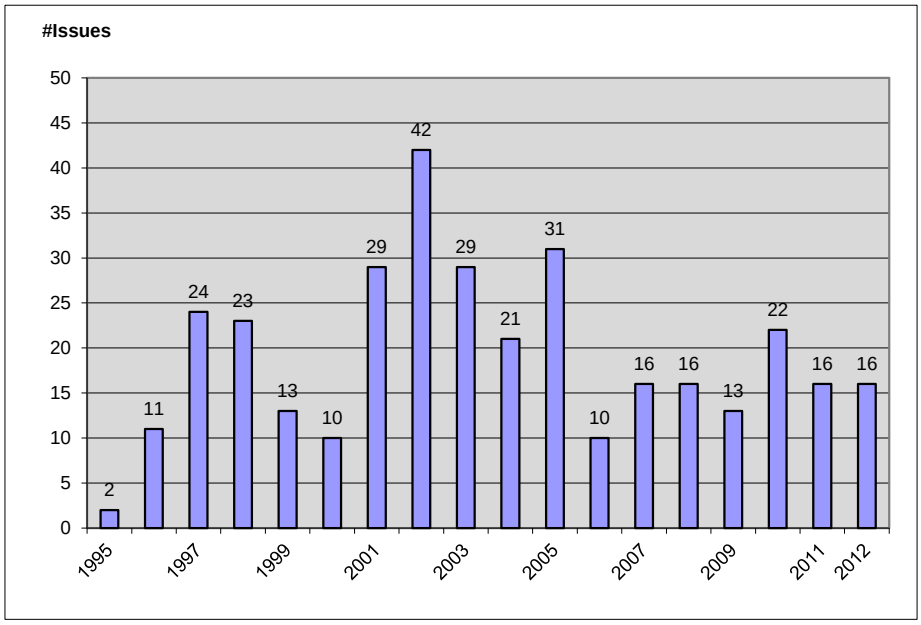
The WTO reports that member countries submitted 344 complaints about trade concerns associated with SPS requirements between 1995 and 2012 (**Figure 1**). The United States, among other developed countries, raised many of the concerns reviewed by the SPS committee.

[93] See U.S. Chamber of Commerce's website, http://www.uschamber.com/issues/regulatory/precautionary-principle.

[94] Ibid.

[95] United Nations University, "Trading Precaution: The Precautionary Principle and the WTO," November 2005.

Figure 1. SPS-Specific Trade Concerns Raised in the WTO (1995-2012)



Source: WTO, Committee on Sanitary and Phytosanitary Measures, "Specific Trade Concerns," Overview and Summary Graphs and Tables," G/SPS/GEN/204/Rev.11 (13-1021), February 26, 2013.

About 40% of SPS-specific trade concerns involved animal health and zoonotic diseases[96] (**Figure 2**). Another 30% of trade concerns involved food safety, followed by 24% on plant health and 6% concerning other issues such as certification requirements or translation. Within the animal health and zoonoses category, complaints involved foot-and-mouth disease (24%), transmissible spongiform encephalopathy (33%), and avian influenza (9%), among other animal health concerns (34%).[97] About one-third (101) of all SPS-specific trade concerns were reported by the committee to have been resolved, while the remaining issues often required ongoing attention.

In the United States, federal agencies continue to review an increasing number of foreign SPS measures notified to the WTO.[98] USDA reports that the number of SPS measures reviewed by U.S. government agencies rose from under 200 notified measures in 1995 to a total of 7,240 notified measures as of 2009, followed by an additional 950 notifications for 2010.[99] More recent data are not available. (Similar information is not available for TBT measures, but would likely also cover other non-food traded goods.) Of these, USDA reports that combined SPS measures by Brazil, China, and other Asian nations account for a large share of total number of SPS notifications (**Figure 3**).

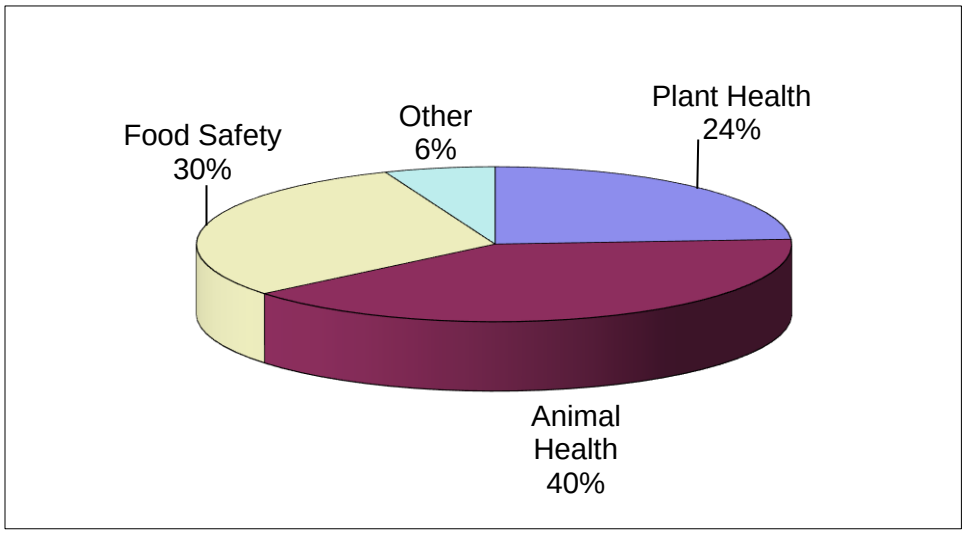
[96] Zoonotic refers to a disease that may be naturally transmitted from animals to humans under natural conditions (e.g., rabies). Zoonoses may be bacterial, viral, or parasitic, or may involve unconventional agents.

[97] WTO, Committee on Sanitary and Phytosanitary Measures, "Specific Trade Concerns," Overview and Summary Graphs and Tables," G/SPS/GEN/204/Rev.11 (13-1021), February 26, 2013.

[98] WTO members are required to notify the WTO of their SPS/TBT measure whenever there is no international standard or the SPS measure substantially differs from the international standard and the measure may have a significant effect on trade among WTO members (SPS Agreement, Annex B; TBT Agreement, Article 2).

[99] Freese, R., "Monitoring Foreign SPS Measures To Expand U.S. Agricultural Exports," May 2010.

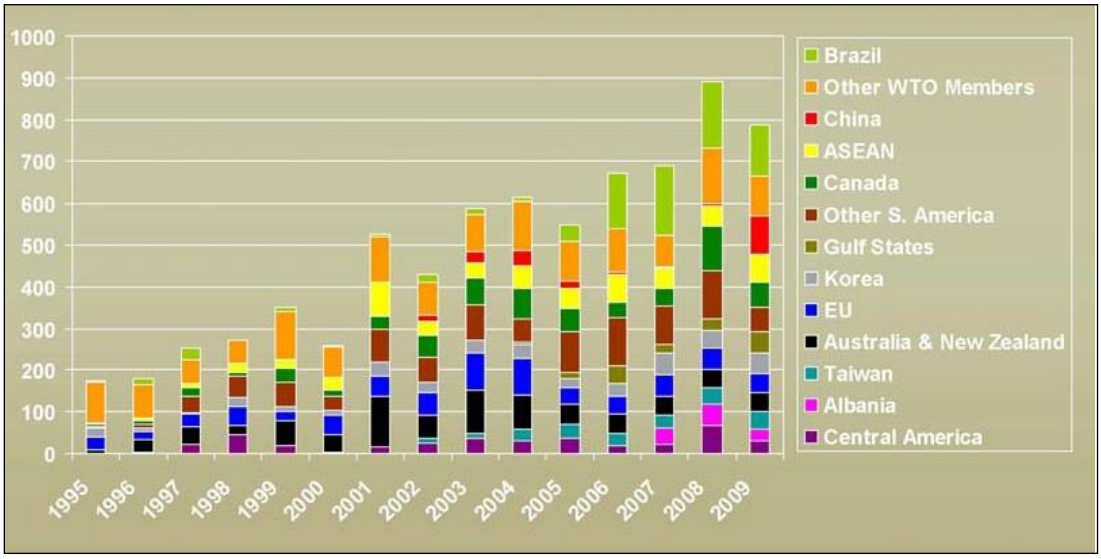
Figure 2. SPS-Specific Trade Concerns by Subject (1995-2012)



Source: WTO, Committee on Sanitary and Phytosanitary Measures, "Specific Trade Concerns," Overview and Summary Graphs and Tables," G/SPS/GEN/204/Rev.11 (13-1021), February 26, 2013.

Figure 3. Foreign SPS Measures Reviewed by the United States

by Country/Region, 1995-2009



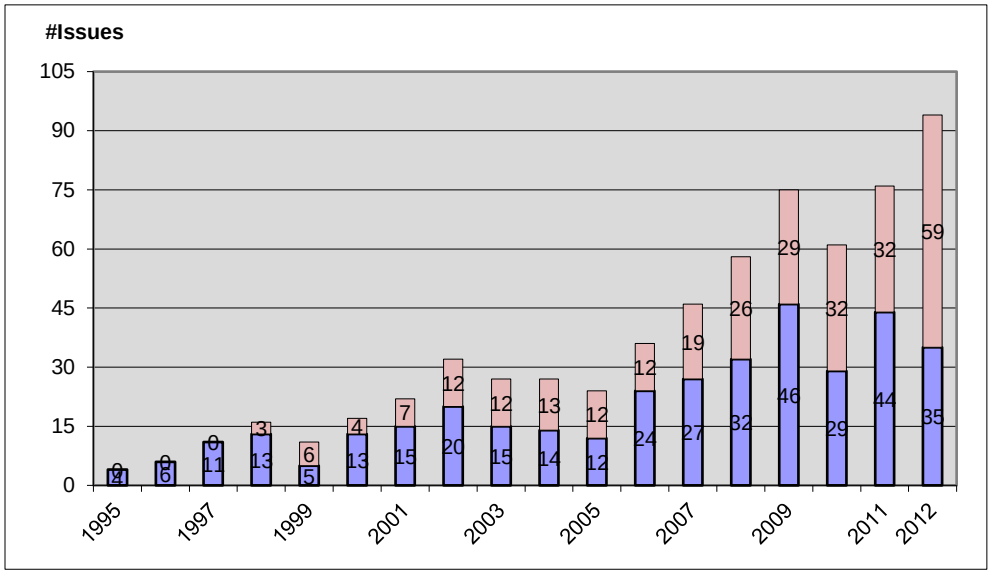
Source: Freese, R., "Monitoring Foreign SPS Measures To Expand U.S. Agricultural Exports," U.S. Department of Agriculture, May 2010. Similar data are not available for TBT measures or for more recent years.

TBT Measures

Trade concerns involving TBT requirements also have been increasing. The WTO reports that member countries submitted 278 new complaints from 1995 to 2012, in addition to the roughly 30-60 complaints per year that had been previously raised to the TBT committee (**Figure 4**). The United States, among other developed countries, raised many of the concerns reviewed by the TBT committee. As the TBT Agreement addresses both food and nonfood traded goods, not all of

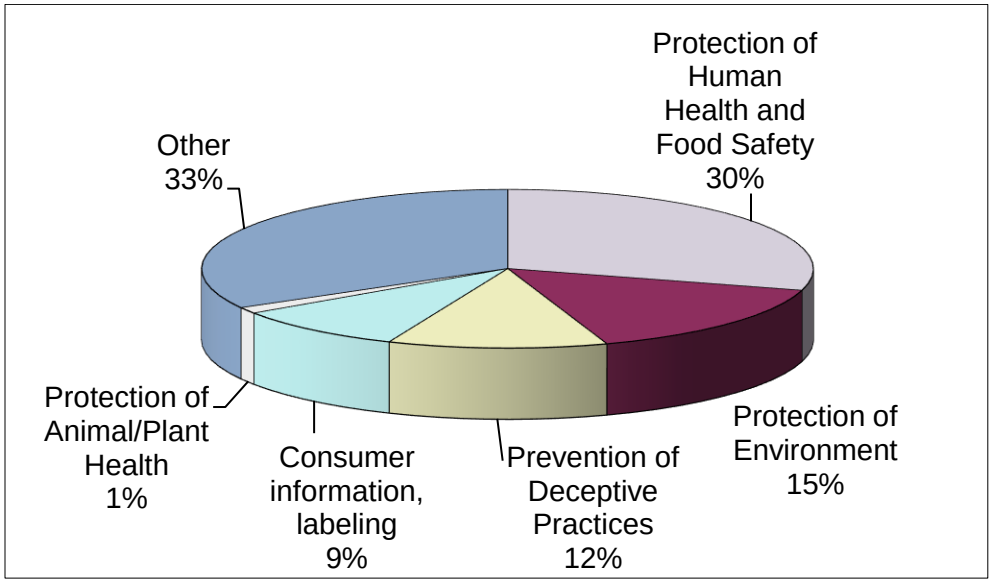
these trade concerns have involved food products, and data are not available to distinguish foods only. However, of these, "protection of human health and food safety" was the most often single stated objective for the use of TBT measures, accounting for about 30% of all TBT-specific concerns (**Figure 5**).

Figure 4. Number of TBT-Specific Trade Concerns Raised in the WTO (1995-2012)



Source: WTO, Committee on Technical Barriers to Trade, "Eighteenth Annual Review of the Implementation and Operation of the TBT Agreement," G/TBT/33/Rev.11 (13-1045), February 27, 2013. Lower part of bar indicates newly raised concerns; upper part of bar indicates previously raised concerns.

Figure 5. TBT-Specific Trade Concerns by "Stated Objective" (1995-2012)



Source: WTO, Committee on Technical Barriers to Trade, "Eighteenth Annual Review of the Implementation and Operation of the TBT Agreement," G/TBT/33/Rev.11 (13-1045), February 27, 2013.

Notes: Shares based on reported "stated objectives for the measures in 1995-2012". For each specific trade concern there can be more than one stated objective.

U.S. Concerns Involving SPS/TBT Measures

The United States has several formal trade disputes regarding SPS/TBT measures with the EU. These include concerns regarding the EU's ban on U.S. meats treated with growth-promoting hormones,[100] the EU's restrictions on chemical treatments ("pathogen reduction treatments" or "PRTs") on U.S. poultry,[101] and the EU's moratorium on approvals of biotechnology products.[102] Other formal complaints have involved U.S. concerns about Korean testing and inspection requirements on U.S. agricultural products,[103] Japan's varietal testing requirement of certain fruits and nuts to control for certain pests,[104] and India's restrictions on poultry products related to concerns about avian influenza.[105] (The United States has also expressed concerns about the expanded use of other types of potential trade barriers, including GIs and intellectual property protections involving agricultural products, as well as wine and spirits.)

Other types of trade concerns with other countries have not risen to the level of a formal WTO dispute. These disputes have involved U.S. concerns over foreign rules and requirements regarding the use and approval of agricultural biotechnology in other WTO member countries,[106] Russia's restrictions on antimicrobial residues and the use of chlorine rinses on U.S. meat and poultry exports,[107] and also ongoing prohibitions against some U.S. livestock products due to concerns about bovine spongiform encephalopathy (BSE, or "mad cow" disease), which was detected in the United States in 2003.

Foreign countries also have objected to various U.S. trade measures as well, including our country of origin labeling (COOL)[108] and "dolphin-safe" labeling standards,[109] as well as U.S. restrictions on poultry product imports from China,[110] among others.[111] Concerns about U.S. standards and procedures involve issues regarding the U.S. plant and animal health approval process, and differences between the United States and EU regarding their respective final approval procedures for products derived using biotechnology as well as labeling requirements for such products, among other types of concerns.[112]

[100] WTO, "Dispute DS26." See also CRS Report R40449, *The U.S.-EU Beef Hormone Dispute*.

[101] WTO, "Dispute DS389." See also CRS Report R40199, *U.S.-EU Poultry Dispute on the Use of Pathogen Reduction Treatments (PRTs)*.

[102] WTO, "Dispute DS291," See also CRS Report RS21556, *Agricultural Biotechnology: The U.S.-EU Dispute*.

[103] SPS disputes DS3, DS5, and DS41. See CRS Report RL34528, *U.S.-South Korea Beef Dispute: Issues and Status*.

[104] See, for example, SPS disputes DS76 and DS245. For a full listing, see WTO, "[SPS] Disputes by Agreement," http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19.

[105] WTO, "Dispute DS430."

[106] As of May 2013, there were currently 159 countries that are members of the WTO.

[107] For more information, see CRS Report RS22948, *U.S.-Russia Meat and Poultry Trade Issues*.

[108] WTO, "Dispute DS384." See also CRS Report RS22955, *Country-of-Origin Labeling for Foods and the WTO Trade Dispute on Meat Labeling*.

[109] WTO, "Dispute DS381."

[110] WTO, "Dispute DS392."

[111] For a full listing, see WTO, "[TBT] Disputes by Agreement," http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A22.

[112] CRS communication with staff from the EU Delegation and EC Directorate-General for Trade, December 20, 2013.

SPS/TBT Trade Concerns Reported by USTR

Annual reports by USTR detail numerous ongoing trade concerns involving U.S. agricultural products and processes under both the SPS and TBT Agreements.[113] Many of these trade concerns have not been formally brought to the WTO, but are addressed on an ongoing basis by U.S. government agencies in an attempt to resolve these issues, perhaps before they become part of a formal complaint or WTO trade dispute.

In 2013, USTR reported about 150 ongoing trade concerns in more than 50 countries or trade regions involving agricultural products under both the SPS and TBT Agreements. A full summary of these ongoing SPS/TBT trade concerns based on the most recent annual report is provided in **Appendix A** at the end of this report. (The information in the tables generally excludes most non-agricultural products, but may include some non-food items such as textiles and fibers, cosmetics and body care products, tobacco products, and reformulated fuels. Cases involving wine are included, but most other alcoholic beverages, such as distilled spirits, are excluded.)

The United States continues to actively pursue the removal of SPS-specific trade barriers on an ongoing and increasing basis. For example, USDA's most recent publicly available report indicates that the U.S. government made the following requests in 2009:[114]

- removal of certain tolerances on food additives, pesticides, and contaminants, tolerances deemed by USDA to be "unscientifically-based" (468 instances);
- submission of risk assessments for actions taken by some U.S. trading partners on certain agricultural products (134 instances);
- adoption of international standards by some U.S. trading partners for certain agricultural products (117 instances);
- adoption of U.S. standards by some U.S. trading partners for certain agricultural products (78 instances); and
- changes to quarantine and inspection requirements by some U.S. trading partners for certain agricultural products (18 instances).

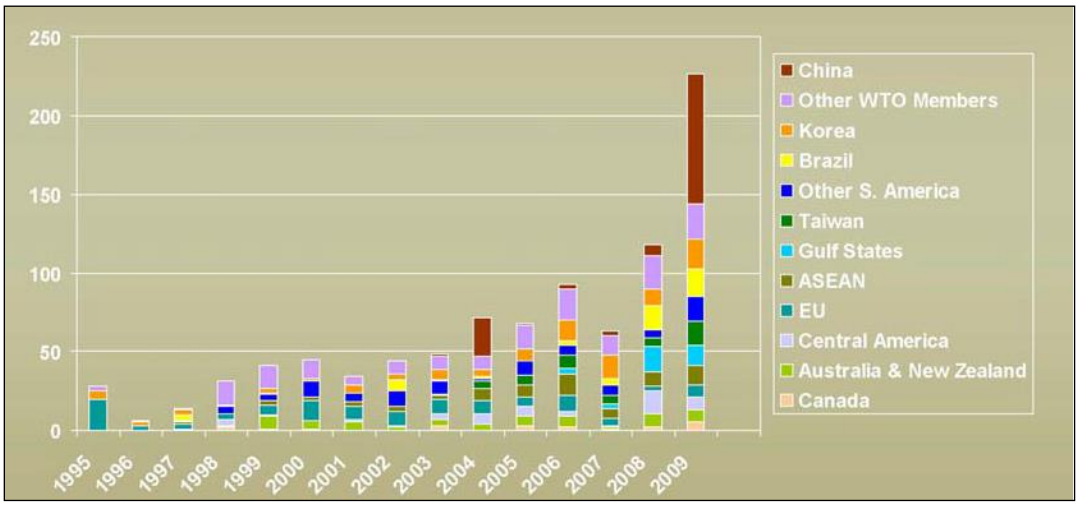
Nearly one-half of the comments pertained to measures regarding processed products; one-third addressed requirements for live animals and fish (and their products, including dairy products); and almost one-quarter were for measures that introduced new standards or entry requirements for plants, bulk commodities (including those made with biotechnology), and horticultural products. The leading countries of U.S. comments were China (82 U.S. comments), South Korea (19 comments), Brazil (18 comments), and Taiwan (15 comments). Moreover, the total number of U.S. comments on foreign SPS measures has been increasing, rising from fewer than 30 comments in 1995 to more than 230 comments in 2009 (**Figure 6**).

[113] USTR, *Report on Sanitary and Phytosanitary Measures* and *Report on Technical Barriers to Trade* (various years).

[114] Freese, R., "Monitoring Foreign SPS Measures To Expand U.S. Agricultural Exports," USDA, May 2010.

Figure 6. Number of U.S. Comments on Foreign SPS Measures

by Country/Region, 1995-2009



Source: Freese, R., "Monitoring Foreign SPS Measures To Expand U.S. Agricultural Exports," U.S. Department of Agriculture, May 2010.

Notes: Similar data are not available for TBT measures, and would likely also cover non-food traded goods.

Overall, USDA reports that in 2009 the U.S. government commented on about one-third of all foreign SPS notifications submitted to WTO, an increase from previous years when the United States commented on about 10% of all foreign SPS notifications. This rise in U.S. comments on foreign SPS notifications is one indication that SPS measures may increasingly be affecting U.S. agricultural exporters in some international markets. (Similar information is not available for TBT measures, but would likely also cover other non-food traded goods.)

Formal SPS/TBT Trade Disputes Involving the United States

Although not all trade concerns about the use of SPS and TBT measures rise to the level of a formal complaint to the WTO, some trade concerns involving SPS/TBT measures have the potential to develop into a formal trade dispute, requiring WTO dispute resolution between the U.S. and its trading partners in some cases.

As of March 2014, in the WTO, 40 cases have cited the SPS Agreement and 49 cases have cited the TBT Agreement (the latter including non-food related disputes). Roughly half of all cases under both agreements have involved the United States as either "complainant" (**Table 2**) or "respondent" (**Table 3**).[115] Many of these cases continue to be debated. These listings include formal cases involving agricultural and fisheries products and processes under the SPS Agreement and TBT Agreement, but exclude nonfood traded goods as well as some other products such as distilled spirits and textiles.

[115] Of all cases involving the United States, ten cases cite both the SPS Agreement and the TBT Agreement.

Table 2. WTO Formal Complaints Invoking the SPS and TBT Agreements (Complainant: United States)

WTO Agreement	Complainant: United States	Respondent	Status of Dispute	Dispute Record
SPS, TBT	"Certain Measures Affecting Poultry Meat and Poultry Meat Products from the United States" regarding EC restrictions on the use of chemical treatments ("pathogen reduction treatments" (PRTs)) designed to reduce the level of microbes on the meat.	European Communities	**Consultations Requested:** January 2009 **Current Status:** Implementation notified by respondent.	DS389
SPS	"Measures Concerning the Importation of Certain Agricultural Products from the United States" a number of orders issued by India's Department of Animal Husbandry, Dairying, and Fisheries.	India	**Consultations Requested:** March 2012 **Current Status:** Panel composed.	DS430
SPS, TBT	"Measures Affecting the Approval and Marketing of Biotech Products" regarding the moratorium applied by the EC since October 1998 on the approval of biotech products.	European Communities	**Consultations Requested:** May 2003 **Current Status:** Authorization to retaliate requested (including arbitration).	DS291
SPS	"Measures Affecting the Importation of Apples" regarding Japan's quarantine restrictions on imported apples said to be necessary to protect against introduction of fire blight.	Japan	**Consultations Requested:** March 2002 **Current Status:** Mutually acceptable solution on implementation notified.	DS245
SPS, TBT	"Measures Affecting Trade in Live Swine" regarding Mexico's October 1999 definitive anti-dumping measure on live swine for slaughter exported from the United States.	Mexico	**Consultations Requested:** July 2000 **Current Status:** In consultations.	DS203
SPS	"Measures Affecting Agricultural Products" regarding Japan's quarantine measures of imports of certain agricultural products.	Japan	**Consultations Requested:** April 1997 **Current Status:** Mutually acceptable solution on implementation notified.	DS76
SPS, TBT	"Measures Concerning Inspection of Agricultural Products" for the testing, inspection, and other measures required for the importation of agricultural products into Korea.	South Korea	**Consultations Requested:** May 1996 **Current Status:** In consultations.	DS41
SPS, TBT	"Measures Concerning Meat and Meat Products (Hormones)" regarding measures taken by the EC to prohibit the use of hormones in livestock production.	European Communities	**Consultations Requested:** January 1996 **Current Status:** Mutually acceptable solution on implementation notified.	DS26

WTO Agreement	Complainant: United States	Respondent	Status of Dispute	Dispute Record
SPS	"Measures Affecting the Importation of Salmonids" regarding Australia's prohibition of imports of salmon based on a quarantine regulation.	Australia	**Consultations Requested:** November 1995 **Current Status:** Settled or terminated (withdrawn, mutually agreed solution).	DS21
SPS, TBT	"Measures Concerning the Shelf-Life of Products" regarding certain requirements imposed by South Korea on imports.	South Korea	**Consultations Requested:** May 1995 **Current Status:** Settled or terminated (withdrawn, mutually agreed solution).	DS5
SPS, TBT	"Measures Concerning the Testing and Inspection of Agricultural Products" with respect to imports of agricultural products into South Korea.	South Korea	**Consultations Requested:** April 1995 **Current Status:** In consultations.	DS3
TBT	"Administration of Measures Establishing Customs Duties for Rice" regarding the administration of laws and regulations establishing the customs duties applicable to rice imported from the United States.	Belgium	**Consultations Requested:** October 2000 **Current Status:** Settled or terminated (withdrawn, mutually agreed solution).	DS210
TBT	"Measures Affecting Imports of Footwear, Textiles, Apparel and other Items" regarding the imposition of specific duties in excess of the bound rate and other measures by Argentina.	Argentina	**Consultations Requested:** October 1996 **Current Status:** Implementation notified by respondent.	DS56

Source: Compiled by CRS from WTO information on trade disputes by agreement: (1) Sanitary and Phytosanitary Measures (SPS) and (2) Technical Barriers to Trade (TBT) from WTO's website (http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#selected_agreement; http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A22#selected_agreement). More detailed information on these disputes is available at the WTO's website by referencing the case numbers shown in the tables. In the WTO, countries of the European Union are referred to as the European Communities.

Notes: Status per WTO's websites, as of March 2014. Excludes disputes where the United States is neither a dispute respondent nor complainant. Generally excludes non-agricultural products.

Table 3. WTO Formal Complaints Invoking the SPS and TBT Agreements (Respondent: United States)

WTO Agreement	Respondent: United States	Complainant	Status of Dispute	Dispute Record
SPS	"Measures Affecting the Importation of Fresh Lemons" regarding certain measures affecting the importation of fresh lemons from the Northwest region of Argentina.	Argentina	**Consultations Requested:** September 2012 **Current Status:** In consultations.	DS448
SPS	"Measures Affecting the Importation of Animals, Meat and Other Animal Products from Argentina."	Argentina	**Consultations Requested:** August 2012 **Current Status:** Panel established but not yet composed.	DS447
SPS	"Measures Affecting the Production and Sale of Clove Cigarettes" regarding the Family Smoking Prevention Tobacco Control Act of 2009 in the United States that restricts clove cigarettes.	Indonesia	**Consultations Requested:** April 2010 **Current Status:** Report(s) adopted, with recommendation to bring measure(s) into conformity.	DS406
SPS	"Certain Measures Affecting Imports of Poultry from China" regarding certain measures taken by the United States in the Omnibus Appropriations Act of 2009, which denied the use of any funding to allow Chinese poultry to be imported to the United States.	China	**Consultations Requested:** April 2009 **Current Status:** Report(s) adopted, no further action required.	DS392
SPS, TBT	"Certain Country of Origin Labeling Requirements" regarding the U.S. implementation of mandatory country of origin labeling (COOL) provisions in 2008.	Mexico and Canada	**Consultations Requested:** December 2008 **Current Status:** Compliance proceedings ongoing	DS386 and DS384
SPS, TBT	"Certain Measures Affecting the Import of Cattle, Swine and Grain from Canada" regarding certain measures, imposed by South Dakota and other states, prohibiting entry or transit to Canadian trucks carrying cattle, swine, and grain.	Canada	**Consultations Requested:** September 1998 **Current Status:** In consultations.	DS144
SPS, TBT	"Measures Affecting Imports of Poultry Products" regarding a ban on U.S. imports of poultry and poultry products from the EC under USDA's Food Safety and Inspection Service (FSIS) measures.	European Communities	**Consultations Requested:** August 1997 **Current Status:** In consultations.	DS100

WTO Agreement	Respondent: United States	Complainant	Status of Dispute	Dispute Record
TBT	"Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products" regarding dolphin protection measures and "dolphin-safe" labeling requirements for tuna harvested in the Eastern Tropical Pacific ocean by certain large shipping vessels.	Mexico	**Consultations Requested:** October 2008 **Current Status:** Report(s) adopted, with recommendation to bring measure(s) into conformity.	DS381
TBT	"Measures Affecting Textiles and Apparel Products (II)" regarding alleged changes to U.S. rules of origin for textiles and apparel products.	European Communities	**Consultations Requested:** November 1998 **Current Status:** Settled or terminated (withdrawn, mutually agreed solution).	DS151
TBT	"Measures Affecting Textiles and Apparel Products" regarding alleged changes to U.S. rules of origin for textiles and apparel products.	European Communities	**Consultations Requested:** May 1997 **Current Status:** Settled or terminated (withdrawn, mutually agreed solution).	DS85
TBT	"Import Prohibition of Certain Shrimp and Shrimp Products" regarding a ban on the importation of certain shrimp and shrimp products from the Philippines imposed by the United States.	Philippines	**Consultations Requested:** October 1996 **Current Status:** In consultations.	DS61

Source: Compiled by CRS from WTO information on trade disputes by agreement: (1) Sanitary and Phytosanitary Measures (SPS) and (2) Technical Barriers to Trade (TBT) from WTO's website (http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#selected_agreement; http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A22#selected_agreement). More detailed information on these disputes is available at the WTO's website by referencing the case numbers shown in the tables. In the WTO, EU countries are referred to as the European Communities.

Notes: Status per WTO's websites, as of March 2014. Excludes disputes where the United States is neither a dispute respondent nor complainant. Generally excludes non-agricultural products.

A trade dispute arises when a member government believes another member government is violating a WTO agreement. The complaining member must submit a "request for consultations" identifying the agreements it believes are being violated. Governments can, and often do, resolve SPS and TBT (among other trade) disagreements informally through bilateral and multilateral discussions, usually among technical experts (e.g., scientists, or health professionals) and, if necessary, higher-level trade officials. If such methods are not successful in resolving a particular concern, the countries involved may conclude that a bilaterally agreed approach is not possible. If the trading partner is a WTO Member, and if the United States considers that measure is inconsistent with WTO rules, the United States may decide to assert its rights under the SPS or TBT Agreements through the WTO's dispute settlement system. Disputes that cannot be resolved through bilateral and multilateral discussions may be elevated to formally established dispute procedures. Within the WTO, these procedures are spelled out in the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes.[116]

[116] For more information, WTO, "Understanding on rules and procedures governing the settlement of disputes"

If a WTO dispute settlement panel ultimately determines that a country's SPS or TBT measure, for example, is inconsistent with a member's WTO obligations, and WTO members adopt the panel and/or any appellate body report, the defending country is expected to withdraw the measure. Compensation and retaliation are available as temporary remedies. If compensation is not provided to the complaining country by the defending country, and the two still fail to reach a mutually acceptable solution, the WTO panel can authorize trade retaliation if the complaining country so requests. Such retaliation generally takes the form of higher tariffs against a portion of the defending country's exports to the complaining country.[117]

Potential Effects on International Agricultural Trade

The intended purpose of most SPS/TBT measures is to protect the safety and the integrity of the domestic and imported food supply. However, there are concerns that SPS/TBT measures have the potential to restrict international trade. In some cases, this may be an unintentional outcome by an importing country in its efforts to ensure food safety. In other cases, SPS/TBT measures may be used as a form of disguised protectionism by an importing country.[118] The potential of SPS/TBT measures to become non-tariff barriers to trade has increased as monetary tariffs on traded goods have been reduced under multilateral trade agreements and various free trade agreements.[119]

In some cases, SPS barriers and agriculture-related TBTs can impose significant economic costs on agricultural and food exporters, by forcing them to make often costly changes in production or marketing in order to comply. A foreign SPS or TBT action can halt all imports of a product, resulting in market or other types of economic losses for the exporting industry. Alternatively, the imposition of technical standards and guidelines may result in certain economic and societal benefits and offset other types of unaccounted for welfare costs that may be associated with trade, such as protection against public health risks from food safety outbreaks or foodborne illness, and also protection against plant and animal pests and disease, and/or degradation of environmental and natural resources. Given the importance of agricultural trade to the U.S. economy, the United States is pursuing ways to reduce and/or remove both tariff and nontariff barriers through multilateral and bilateral negotiations.

Importance of U.S. Agricultural Exports

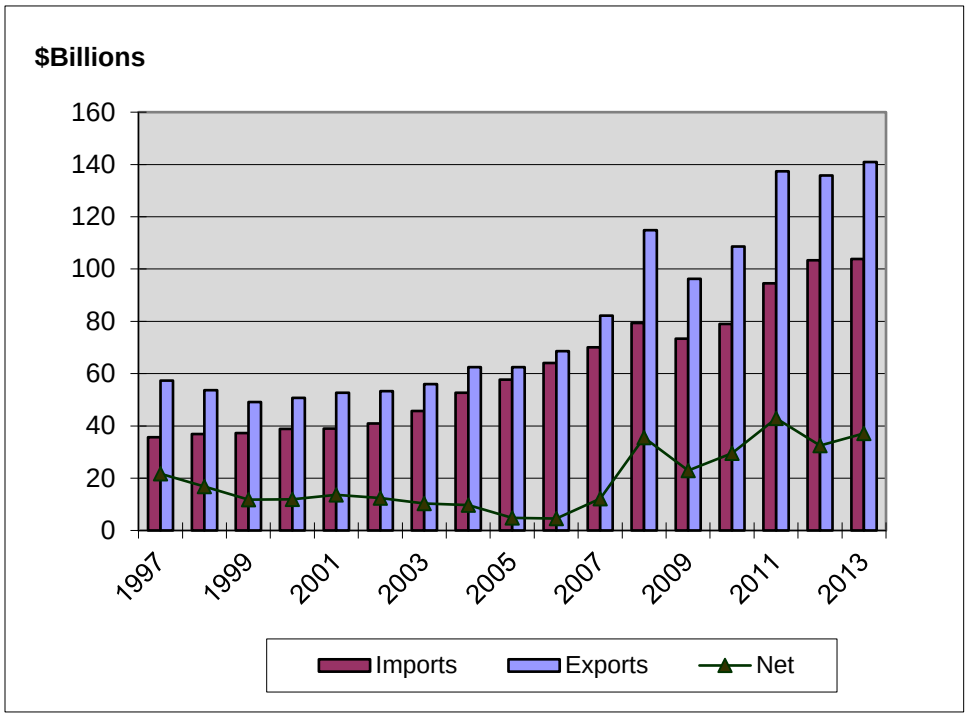
The United States is a net exporter of agricultural products. Over the past few years, there has been a growing trade surplus in U.S. agricultural trade. Over the 2009-2013 time period, U.S. agricultural exports have averaged $124 billion per year, while imports have averaged about $91 billion per year. This gap between exports and imports has resulted in a U.S. trade surplus of more than $30 billion (**Figure 7**).

[117] See also CRS Report RS20088, *Dispute Settlement in the World Trade Organization (WTO): An Overview*.

[118] WTO, "Standards and Safety," http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm#TRS.

[119] WTO, *World Trade Report 2012*, http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report12_e.pdf.

Figure 7. U.S. Agricultural Trade, FY1997-FY2013



Source: USDA compiled data (value of U.S. trade-agricultural), by fiscal year, http://www.ers.usda.gov/topics/international-markets-trade/us-agricultural-trade.aspx.

Notes: Agricultural products exclude re-exports. Reflect USDA-revised data for domestic exports and imports for consumption, customs value basis.

USDA's Economic Research Service estimates that each $1 billion in U.S. agricultural exports supports approximately 6,800 jobs throughout the economy, and each $1 of agricultural exports stimulated another $1.29 in business activity (based on 2011 data).[120] Accordingly, ERS reports that U.S. agricultural exports supported nearly 923,000 full-time American jobs both on and off-farm, and also resulted in a total economic output of more than $300 billion in 2011.

Estimated Economic Losses to U.S. Export Markets

Despite the stated policy goals of an importing country for imposing non-tariff measures such as SPS and TBT—namely, to protect public health and the environment—the WTO acknowledges that such measures are often deliberately for protectionist purposes and might impose economic losses on some exporting countries.[121] However, quantifying the potential economic losses from non-tariff measures is not always straightforward.

Previous USDA Analysis (1996 Data)

As a follow-up to the Uruguay Round negotiations in the mid-1990s, USDA published a widely cited report of the aggregate estimated value of lost export revenue to U.S. agricultural exports from foreign technical trade barriers, including barriers due to SPS and TBT measures. The study

[120] USDA, ERS, "Effects of Trade on the U.S. Economy." Based on export-generated employment, income, and purchasing power in both the farm and nonfarm sectors.

[121] See, for example, WTO press release, "Increased use of regulatory measures creates new challenges for the WTO, report says," July 16, 2012; and WTO, *World Trade Report 2012*, July 2012.

identified agricultural products and import country regions of concern to U.S. exporters. The study reported the presence of "questionable technical barriers" in more than 60 countries affecting trade in more than 300 agricultural products, valued at an estimated $5.0 billion of U.S. agricultural, forestry, and fishery exports (using 1996 data), accounting for about 7% of total agricultural exports during that year: "Questionable technical barriers were reported for 62 countries. Over 300 market restrictions were identified that threatened, constrained, or blocked an estimated $5.0 billion of U.S. agricultural, forestry, and fishery exports, 7.1% of the $69.7 billion total exported in 1996."[122]

SPS measures accounted for 90% of the estimated revenue losses in USDA's study, with the remainder from revenue losses attributable to TBT measures and other types of trade measures.

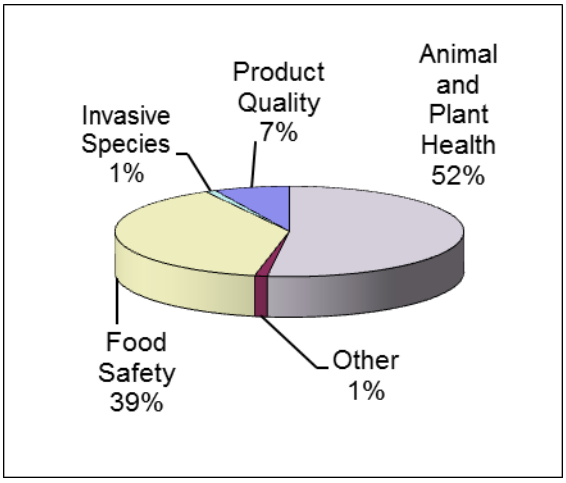
The underlying ERS survey data provide more information on these estimated trade effects. Although based on trade data from 1996, the reported underlying relationships may still be useful for understanding how trade may be affected from foreign technical trade barriers.

The ERS study reported that, by regulatory goal, two types of "risk-reducing" measures accounted for most of the total estimated export revenue losses: commercial plant and animal health issues (52% of the estimated export revenue losses) and food safety measures (39% of estimated losses), followed by other goals such as product quality and other concerns (**Figure 8**). By policy instrument, process standards (55%) and product standards (24%) accounted for most estimated trade effects (**Figure 9**), as well as full and partial bans (12%) and other requirements.

The ERS survey data identified a range of agricultural products affected by technical trade barriers (**Figure 10**). By product category, four commodity groups accounted for most of the total estimated export revenue losses: further processed products (26% of estimated losses), grains and oilseeds (24%), animal products (17%), and horticultural products (13%), among other products including cotton, seeds, nuts, fish, and forestry products. Within the meat and produce categories, the bulk of the estimated trade effects was associated with beef products and also fruits. By geographic region, technical barriers affecting U.S. agricultural exports were most prevalent in East Asia, accounting for nearly one-half of all reported trade effects, followed by the Americas with about one-fourth of the estimated loss (**Figure 11**).

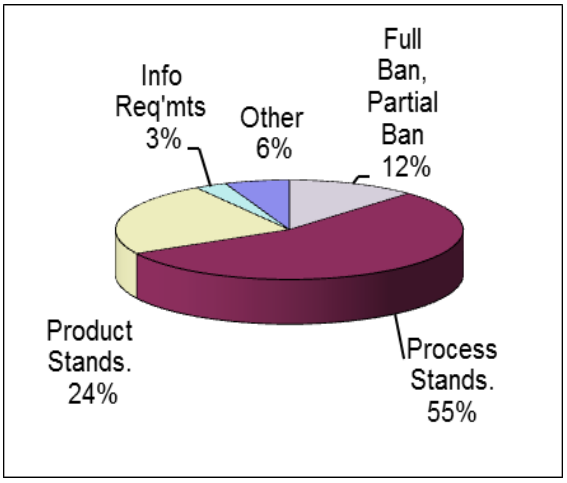
[122] D. Roberts, T.E. Josling, and D. Orden, "A Framework for Analyzing Technical Trade Barriers in Agricultural Markets," TB-1876, March 1999. Builds off earlier work: D. Roberts, and K. DeRemer, *Overview of Foreign Technical Barriers to U.S. Agricultural Exports*, ERS Staff Paper. No. 9705, March 1997. Technical trade barriers are defined as "measures that restrict imports of products that fail to meet a country's health, safety, or environmental standards," and include most types of SPS and TBT measures, among other trade-restricting measures.

Figure 8. Estimated Trade Effects by Regulatory Goal



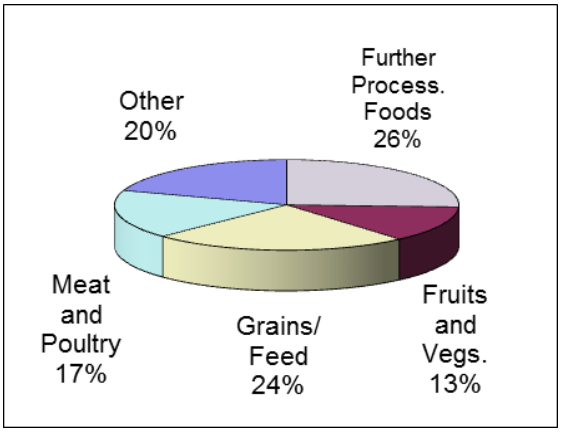
Source: See footnote 122.

Figure 9. Estimated Trade Effects by Policy Instrument



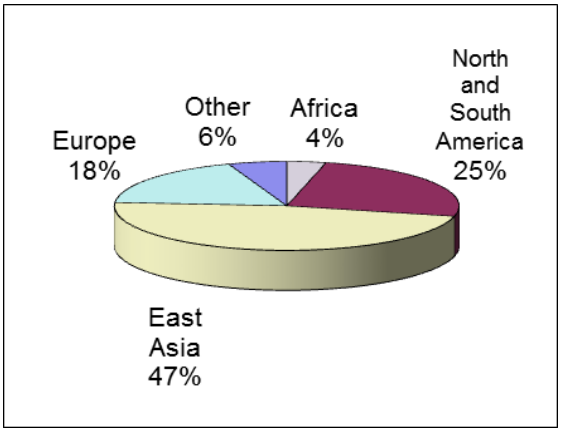
Source: See footnote 122.

Figure 10. Estimated Trade Effects by Product Category



Source: See footnote 122.

Figure 11. Estimated Trade Effects by Geographic Region



Source: See footnote 122.

Other Available Estimates

More recent comprehensive analyses of the aggregate costs to U.S. agricultural exports associated with foreign SPS/TBT measures are not available.[123] Efforts to inventory and quantify agricultural non-tariff barriers such as SPS/TBT measures are complicated by the very nature of such measures, given that they often involve complex regulatory schemes and may lack transparency in how these requirements are applied and in the scientific justification supporting their use.[124] It is also difficult to tease out the cost effects of private voluntary standards from government-

[123] CRS communications with USDA's ERS and the American Farm Bureau Federation personnel, May-June 2011.

[124] See, for example, Scott Bradford, *The Extent and Impact of Food Non-Tariff Barriers in Rich Countries*, Brigham Young University research paper, January 2006.

imposed SPS/TBT measures, and, in some cases, private standards may have more influence on market access into a country than public mandatory standards.[125]

Some studies do provide cost estimates, but often these estimates reflect total costs from all types of nontariff barriers—including prohibitions, and import quotas and licenses, as well as SPS or agricultural TBTs, and may span trade in both food and nonfood merchandise.[126] Other studies instead focus their estimates more narrowly, for example, estimating the economic costs for a specific agricultural product or trade involving regulations between certain countries only, and do not provide aggregate estimates for all product exports globally.

Although more recent formal estimates of U.S. agricultural trade effects are not readily available, USTR continues to assert: "SPS trade barriers prevent U.S. producers from shipping hundreds of millions of dollars worth of goods, hurting farms and small businesses" and states that "elimination of unwarranted SPS foreign trade barriers is a high priority of the U.S. Government."[127] Available estimates indicate that annual trade effects might cost U.S. agricultural exporters well over $1 billion annually. For example, USDA reports that in 2012 the agency's ongoing efforts to "eliminate barriers, open new markets, secure the release of U.S. shipments detained at foreign ports, and ensure the safe movement of agricultural products in a manner consistent with science and international standards" resulted in the agency preserving agricultural exports valued at an estimated $4 billion.[128] Previous estimates by USDA reported that its efforts to resolve SPS barriers in FY2007, for example, allowed U.S. exports with a market value of approximately $1.3 billion to occur.[129] Estimates associated with the ongoing TTIP negotiations indicate that the current regulatory regime and non-tariff trade barriers between the United States and the European Union may have added an estimated $20.2 billion in combined trade costs to U.S.-EU trade in food and beverages in 2011.[130]

In the absence of more precise cost estimates, many U.S. agricultural groups and trade associations continue to actively pursue ways to resolve trade disputes involving SPS and TBT measures, and recognize the increasingly important role that non-tariff measures play in U.S. agricultural export markets.[131]

Other available studies do provide an indication of the potential scale of market and economic implications from non-tariff barriers, including SPS/TBT measures. For example, a 2007 survey showed that among SPS and TBT measures affecting trade in 690 agricultural products exported

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[125] OECD, "Non-Tariff Measures in Agri-Food Trade: Improving Policy Coherence for Development," January 2013.

[126] See, for example, a review by Ferrantino, M., "Quantifying the Trade and Economic Effects of Non-Tariff Measures", OECD Trade Policy Papers, No. 28, OECD, 2006.

[127] USTR, *2010 Report on Sanitary and Phytosanitary Measures (SPS Report)*, April 1, 2010, page 5.

[128] USDA, "USDA Preserves $4 Billion in Agricultural Exports in 2012 by Knocking Down Barriers to Trade," February 1, 2013, http://www.aphis.usda.gov/newsroom/2013/02/pdf/trade_results.pdf.

[129] APHIS, *SPS Accomplishments Report, Fiscal 2007*. The SPS issues in the report are limited to those for which APHIS has lead responsibility—that is, animal and plant health but not food safety. Most of this reported value—$1.2 billion—was resolution of trade issues in order to retain existing sales (mostly produce/horticultural shipments to NAFTA partners Mexico and Canada), not to new or expanded markets. The report also notes that APHIS implemented a number of changes to its own import requirements that provided new or expanded market access for 10 countries and a total of 12 commodities. This reverse trade was valued at approximately $5 million in FY2007.

[130] K. Monahan, "U.S.-EU Trade Talks," *Bloomberg Government*, August 6, 2013. 2011 estimates.

[131] See, for example, two coalition letters from more than 50 agricultural trade associations to Chairman Devin Nunes, Subcommittee on Trade Committee on Ways and Means (April 15, 2013) and to Michael Froman, Deputy National Security Advisor for International Economic Affairs (April 15, 2013); also testimony before the U.S.-China Economic and Security Review Commission by Veronica Nigh, American Farm Bureau Federation, April 25, 2013.

worldwide, only four products did not face barriers in any importing country.[132] In addition, among the 154 countries reviewed in the study, only 92 notified measures under the SPS and TBT Agreements. Studies also show that SPS and TBT measures may negatively affect exports from other countries, especially developing countries. A 2008 study shows that agricultural exports from Africa and the Caribbean and Pacific nations are often negatively and significantly influenced by SPS and TBT measures in certain import markets for a range of tropical and diversified products such as fruit, nut, and vegetable products and preparation, cereals, oil seed, and also cocoa and cocoa preparations.[133] Researchers at the Organization for Economic Co-operation and Development (OECD) also note that "food regulation compliance costs have a relatively higher overall economic impact in low income countries than in high-income countries."[134]

A 2009 study suggests that nontariff barriers restrict agricultural trade, and may be more restrictive to trade than import tariffs. The study shows that not only are average levels of *ad valorem* equivalents (AVEs)[135] higher for agriculture than for manufacturing goods (27% versus 10%), but overall levels of protection—including calculated AVEs of nontariff barriers and import tariffs—are also much higher. Agricultural goods are estimated to have a higher overall average AVE (44%), compared to manufacturing goods (19%).[136] The overall median AVE estimate is also higher: 20% for agriculture and 6% for manufacturing. Similarly, in 2012, the WTO concluded from a literature review of the estimated trade effects of both tariff and non-tariff measures that non-tariff measures may restrict trade far more than tariffs, and that SPS/TBT measures have a negative effect on agricultural trade, especially export market diversification.[137] Another 2009 study looked at the extent to which certain nontariff barriers may result in higher retail prices for some foods, and concluded that nontariff barriers may substantially raise prices for fruits and vegetables, meat products, and also processed foods.[138] The study also concluded that nontariff measures are generally more restrictive in the European Union, United States, and some South East Asian countries, and less restrictive in some African, Eastern European, and Middle Eastern countries.

Finally, other available studies have attempted to estimate the economic impact to specific agricultural products from regulations in certain countries. For example, one study estimated the potential gain in Washington State apple exports to selected countries, including China—where it is believed that if SPS barriers were reduced then U.S. apple exports would be greater. The study concluded that apple exports to China could increase by more than 20% if the tariff equivalent of

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[132] A. Disdier, et al.,"The Impact of Regulations on Agricultural Trade: Evidence from SPS and TBT Agreements," Working Paper 2007-04, February 2007. Based on a survey of 92 importing countries notifying measures under the SPS and TBT agreements (of 154 importing countries). Products in the study with no identified SPS or TBT barriers were wool grease, crude ; certain jojoba oils; and raw/whole beaver furskins and musk-rat furskins.

[133] A. Disdier, et al., *Trade Effects of SPS and TBT Measures on Tropical and Diversification Products*, ICTSD Programme on Agricultural Trade and Sustainable Development, May 2008.

[134] OECD, "Non-Tariff Measures in Agri-Food Trade: Improving Policy Coherence for Development," January 2013.

[135] *Ad valorem* equivalent (AVE) refers to import duties or other charges levied on a traded good, expressed as a percentage of the value of the imported item, and not based on the weight, size, or quantity of the item.

[136] H. L. Kee, A. Nicita and M. Olarreaga, "Estimating Trade Restrictiveness Indices," *The Economic Journal*, 19 (172-199), January 2009. Based on estimated AVEs of non-tariff barriers at the tariff line level for each of the 78 countries.

[137] See, for example, WTO press release, "Increased use of regulatory measures creates new challenges for the WTO, report says," July 16, 2012; and WTO, *World Trade Report 2012*, July 2012.

[138] J. M. Dean, et al., "Estimating the Price Effects of Non-Tariff Barriers," *The B.E. Journal of Economic Analysis & Policy*, 2009, vol. 9, issue 1.

SPS measures imposed in China were to be reduced, which could translate into possible income gains for Washington State apple exporters.[139]

U.S. Strategy for Addressing SPS/TBT Concerns

Overview of U.S. Process

The United States maintains ongoing interagency processes and mechanisms to identify, review, analyze, and address foreign government standards-related measures that can act as barriers to U.S. exports. These activities are coordinated through the Trade Policy Staff Committee (TPSC), which is chaired by USTR and comprised of representatives from federal agencies with an interest in foreign standards-related measures.[140] Representatives meet formally a few times per year and also maintain ongoing informal consultation and coordination on SPS and TBT issues throughout the year. Representatives of the subcommittee include officials from USDA, the Department of Commerce, and the Department of State, and also officials from the Office of Management and Budget (OMB) and federal regulatory agencies, such as the HHS Department's Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). More broadly, USTR chairs an interagency group (i.e., both USDA and non-USDA agencies with SPS and TBT responsibilities) that meets regularly on WTO SPS issues. As part of this ongoing interagency process, the United States regularly reviews SPS and TBT measures involving globally traded goods that are notified to the WTO, as required under the SPS and TBT Agreements.

Ongoing Interagency Efforts

Regarding agricultural products, the U.S. process for identifying and dealing with SPS and TBT issues is coordinated, at least in the initial stages, by staff of USDA's Foreign Agricultural Service (FAS), the lead USDA trade agency. An FAS office is the designated WTO "enquiry" point for communicating with other countries on SPS measures, and shares information with and from industry groups and exporters, USTR, FAS's overseas posts, and various regulatory agencies such as USDA's Animal and Plant Health Inspection Service (APHIS) and Food Safety and Inspection Service (FSIS), EPA, and FDA. FAS staff maintain a database on foreign SPS and agriculture-related TBT measures with a potential impact on trade, even those which may comply with WTO or other international trade agreement provisions. FAS chairs regular meetings of USDA technical staff from various USDA agencies to discuss the status of emerging and ongoing SPS/TBT issues, including options for resolving a potential dispute.

As SPS and agriculture-related TBT concerns arise, technical staff and other government officials usually initiate at least informal dialogue with countries concerning the measure in question. They also communicate with affected industries in the private sector. Oftentimes an SPS or TBT issue is most likely to be resolved when USDA or other government experts discuss its scientific aspects with their foreign counterparts. These staff-level discussions often help the importing and exporting parties to clarify their differences, and to determine mutually acceptable conditions for importing the affected product that will not compromise the importing party's safeguards.

[139] L. Nogueira and H. Chouinard, "The Effects of Reducing Sanitary and Phytosanitary (SPS) Barriers to Trade on the Washington State Apple industry," paper presented at the American Agricultural Economic Association meeting, 2006.

[140] For additional information, see USTR's *Report on Technical Barriers to Trade*. This process was established in part to address criticisms highlighted in GAO, *Agricultural Exports: U.S. Needs a More Integrated Approach to Address Sanitary/Phytosanitary Issues*, NSIAD-98-32, December 1997.

However, not all problems can be solved in this manner. Eventually, bilateral consultations with the foreign country over an outstanding SPS or TBT issue might be pursued by USTR, with USDA's assistance. USTR also can decide at any point to elevate the issue via a complaint to the WTO or, if a Canadian or Mexican measure, the North American Free Trade Agreement (NAFTA), triggering formal dispute resolution procedures.[141] (Other FTAs generally defer dispute settlement to the WTO procedures.)

Regarding SPS measures, USTR reports that in 2012, the interagency group reviewed 908 SPS notifications by 50 WTO Members and provided comments to these trading partners on 119 proposed or in-force SPS measures.[142]

U.S. Reporting Systems

USTR is required to submit to the President, the Senate Finance Committee, and appropriate committees in the House of Representatives, an annual report on significant foreign trade barriers, the *National Trade Estimate Report on Foreign Trade Barriers* (or NTE report).[143] The NTE report covers significant barriers—including tariffs and various nontariff barriers, including those that are consistent and also inconsistent with international trading rules. The report categorizes, describes, and in some cases quantifies these barriers on a country-by-country basis.

As part of its NTE Report and its other two accompanying reports on SPS and TBT barriers to U.S. trade,[144] USTR reports that SPS and TBT trade barriers continue to threaten, constrain, or block U.S. agricultural exports. These reports address concerns within more than 60 major U.S. trading partners. Recent reports have identified significant SPS-related trade barriers facing U.S. agricultural exporters in several countries. USTR also identified significant standards-related trade barriers to U.S. exports in several countries. A summary of the reported SPS/TBT-related trade concerns is presented in **Appendix A**. Each of these reports is available at USTR's publications website.[145]

Among the types of reported measures that potentially cause concern for U.S. exporters are import policies targeting disease and pest transmission, chemical and pesticide residues, treatment and mitigation requirements, restrictive import and administrative procedures, import bans on products from specific producing areas and bans on certain production inputs, product and/or processing specifications, and perceived health risks. Aside from various standards-related TBT measures, USTR reports that the most significant SPS barriers impeding U.S. exports to multiple foreign markets are "restrictions related to export certifications, biotechnology, bovine

[141] Sections 301 et seq. of the Trade Act of 1974 delineate the domestic legal authority and procedures for U.S. officials in investigating and challenging unfair trade practices, and enforcing U.S. rights under international trade agreements. Interested parties, including agricultural groups, can—and do—petition USTR to initiate such procedures under Section 301 if they believe that a challenge is warranted and that the Administration is not addressing the issue. For more information, see House Committee on Ways and Means, *Overview and Compilation of U.S. Trade Statutes*.

[142] USTR's *Report on Sanitary and Phytosanitary Measures*, p. 14.

[143] The NTE report is required in accordance with Trade Act of 1974 (§181), as added by Trade and Tariff Act of 1984 (§303) and amended by the Omnibus Trade and Competitiveness Act of 1988 (§1304), the Uruguay Round Trade Agreements Act (§311), and the Internet Tax Freedom Act (§1202).

[144] USTR, *National Trade Estimate Report on Foreign Trade Barriers* (or NTE Report); also USTR's *Report on Sanitary and Phytosanitary Measures* and *Report on Technical Barriers to Trade*. The annual SPS and TBT reports were first initiated under the Obama Administration starting in 2010 (following a speech by then USTR Ron Kirk in July 2009; see http://www.ustr.gov/trade-topics/enforcement). Previously, SPS and TBT measures were generally described in each country's profile within the NTE Report.

[145] USTR, http://www.ustr.gov/about-us/press-office/reports-and-publications/.

spongiform encephalopathy (BSE), avian influenza (AI), and maximum residue limits (MRLs) for pesticides."

Responsibility of U.S. Government Agencies

The United States, like other countries, has in place an extensive, often intersecting, system to protect consumers from unsafe food and agricultural products and to protect its animal and plant resources from foreign pests and diseases. A variety of statutes and implementing regulations, directives, and administrative procedures underpin this system. These essentially constitute the nation's SPS measures. Major authorities are briefly described below.

At the same time, U.S. officials work cooperatively with other governments, frequently within international scientific bodies, to develop commonly recognized guidelines for SPS measures (and TBTs) that will promote balanced but safe trade in plants, animals, agricultural, and food products.

Trade Policy and Negotiations

The Office of the United States Trade Representative (USTR), an agency within the Executive Office of the President, is responsible for developing and coordinating U.S. international trade policy and overseeing negotiations with other countries, including with respect to foreign SPS and TBT measures. USTR meets with governments, business groups, legislators, public interest groups, and other interested parties to gather input on SPS and TBT issues and to discuss trade policy and negotiating positions. USTR coordinates U.S. trade policy through an interagency structure, and also serves as the lead U.S. agency in negotiating bilateral, regional, and multilateral trade agreements and lead U.S. counsel in all WTO disputes.

USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), and coordinates processes regarding the specialized subgroups addressing SPS and TBT issues.

Food and Agricultural Products

Within the Department of Health and Human Services, the Food and Drug Administration (FDA) oversees the safety of most human and animal foods and drugs, primarily under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 *et seq.*). The primary exceptions are meat and poultry and their products, which are regulated by USDA's Food Safety and Inspection Service (FSIS) under the Federal Meat Inspection Act (21 U.S.C. §601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. §451 *et seq.*).[146] USDA's Animal and Plant Health Inspection Service (APHIS) has lead responsibility for animal and plant health under the Animal Health Protection Act (7 U.S.C. §8301 *et seq.*) and the Federal Plant Protection Act (7 U.S.C. §7701 *et seq.*). Pesticides are regulated by the independent Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 *et seq.*).

Each of the responsible agencies has promulgated an extensive body of regulations to implement these laws, all of which apply to imports as well as domestic products. For example, plants, animals, and their products require an APHIS import permit. Whether a product can be imported and the conditions for entry are dependent upon an APHIS risk assessment of a product and where it originated, taking into account internationally recognized scientific guidelines—that is, for animal health, the Office of International Epizootics (OIE), and for plant health, the

[146] For more information, see CRS Report RS22600, *The Federal Food Safety System: A Primer*.

International Plant Protection Convention (IPPC). The risk assessment usually culminates with formal rules in the *Federal Register*. FSIS evaluates foreign meat and poultry programs to ensure their equivalency with U.S. requirements and reinspects samples at the border. FDA requires imports to comply with the same safety and labeling standards that apply to domestic foods.

Biotechnology

The basic federal guidance for regulating biotechnology products is the Coordinated Framework for Regulation of Biotechnology (51 *Fed. Reg.* 23302), published in 1986 by the White House Office of Science and Technology Policy (OSTP). A key principle is that genetically engineered products should continue to be regulated according to their characteristics and unique features, not their production method—that is, whether or not they were created through biotechnology. The framework relies on existing statutory authority (such as those noted above) and regulations to ensure the safety of biotechnology research and products, including food and agricultural products.[147]

Homeland Security

After the 2001 terrorist attacks, Congress created the Department of Homeland Security, whose agents now play a major role in inspections of imports, including food and agricultural products. Most of APHIS's border inspection functions and personnel were moved into the new department. Congress also passed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the "Bioterrorism Act," P.L. 107-188), which requires all foreign as well as domestic food manufacturing and related companies to register with the FDA, and requires that the FDA receive prior notifications of all food imports into the United States.

Other Relevant Programs

In addition to these major authorities, numerous other laws provide the basis for U.S. SPS measures and TBTs. The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 *et seq.*) is an example of a TBT-related law. This law, among other things, provides the authority for requiring imported commodities to meet the same or similar grade, size, or other quality requirements as domestic products if they are regulated by a federal marketing order. Within the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration enforces provisions of the Marine Mammal Protection Act and the Endangered Species Act that require certain fishing techniques to protect, respectively, dolphins and sea turtles.

Considerations for Congress

U.S. government and WTO reports and press releases frequently cite the benefits of the SPS and TBT agreements and progress made, under these agreements, in resolving disputes and facilitating trade between countries. However, some, among them food safety and environmental advocacy organizations, and groups that have more broadly opposed efforts toward globalization and harmonization of world trading rules, have long expressed skepticism. They have argued that implementation of the agreements can result in "downward harmonization" rather than upgraded health and safety standards. This can happen when, for example, a WTO dispute settlement panel questions the scientific underpinnings of a U.S. safeguard, and/or the United States agrees to an effectively lower standard to bring negotiations with another country to a successful conclusion.

[147] See CRS Report RL32809, *Agricultural Biotechnology: Background, Regulation, and Policy Issues*.

Others counter that the current trade agreements explicitly recognize the right of individual nations, as well as states and localities, to enact stronger protections than international guidelines if they believe they are appropriate. The United States is especially well-positioned against challenges, because its health and safety policies are scientifically defensible, U.S. officials have argued. Many believe that the SPS and TBT agreements provide the foundation for developing transparent, science-based trade guidelines, as well as an effective framework for resolving disputes in these areas. Others have argued that ongoing free trade agreements, such as the TPP and TTIP, should revisit aspects of these agreements more closely. The effectiveness and flexibility of the SPS and TBT rules also continues to be tested by rapidly emerging changes in food production technology, such as biotechnology and nanotechnology, which were not imminent concerns when the agreements were finalized in 1994.

Many Members of Congress are following closely a number of ongoing SPS-related trade disputes that, they believe, have negatively affected agricultural producers in their states and districts. The most recent farm bill (Agricultural Act of 2014, P.L. 113-79) reauthorized the Technical Assistance for Specialty Crops (TASC) to address SPS and technical barriers to U.S. exports,[148] and also established an agency position to coordinate SPS matters and address agricultural non-tariff trade barriers across agencies.

The U.S. Congress has held a number of hearings to discuss the ongoing FTA negotiations, and some of these have addressed regulatory matters including SPS and TBT. For example, at a House Ways and Means Trade Subcommittee hearing on TTIP in May 2013, Chairman Devin Nunes stated that any agreement must be "ambitious and comprehensive" and should "identify and eliminate unnecessary regulatory barriers, including sanitary and phytosanitary barriers to U.S. agriculture exports."[149] A July 2013 hearing on TTIP by the House Energy and Commerce Committee's Subcommittee on Commerce, Manufacturing, and Trade discussed in broader terms existing regulatory barriers and the need "greater openness, transparency and convergence in regulatory approaches and standards while reducing unnecessarily redundant requirements."[150]

Previous introduced legislation regarding SPS issues in agricultural trade has included H.R. 2707 (112th Congress) by Representative Devin Nunes. H.R. 2707 sought to establish trade negotiating objectives of the United States with respect to the application of SPS measures to agricultural products to facilitate trade in agriculture.

Some lawmakers also have expressed concern that as additional FTAs further lower agricultural tariffs, countries may turn more and more to SPS and TBT measures to protect their farmers from import competition. These Members have stated that SPS matters will be among the factors they will consider in voting for new FTAs. The President must submit all FTAs to Congress, which in turn must pass implementing legislation if the United States is to participate.

Meanwhile, international SPS and TBT rights and obligations could come into play if the U.S. Congress considers legislation placing new restrictions and requirements on food imports. As noted, such bills are being proposed in the wake of a number of highly publicized adulteration incidents related to food and agricultural imports. Any new measures are likely to be closely scrutinized by U.S. trading partners for their adherence to international trade rules.

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[148] See CRS Report R42771, *Fruits, Vegetables, and Other Specialty Crops: Selected Federal Programs*.

[149] Opening Statement by Chairman Devin Nunes, House Ways and Means Trade Subcommittee, "Hearing on U.S.-EU Trade and Investment Partnership Negotiations," May 16, 2013.

[150] Opening Statement by Chairman Lee Terry, Subcommittee on Commerce, Manufacturing, and Trade, hearing on "The U.S. – E.U. Free Trade Agreement: Tipping Over the Regulatory Barriers," July 24, 2013.

Appendix A. USTR-Reported Concerns Involving SPS/TBT Measures, 2013

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
Argentina	SPS	Live Cattle, Beef, and Beef Products	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to concerns about bovine spongiform encephalopathy (BSE, or "mad cow" disease) following its detection in the U.S. in 2003.
	SPS	Pork	Animal Health	Requires import approval, and U.S. pork products must be shipped frozen or tested for trichinosis.
	SPS	Poultry	Animal Health	Prohibits U.S. fresh, frozen, chilled poultry due to concerns over Avian Influenza (AI) and Exotic Newcastle Disease.
	SPS	Apples, Pears	Plant Health	Restricts U.S. fruit exports due to concerns about the efficacy of post-harvest treatments associated with fire blight.
Australia	SPS	Beef, Beef Products	Food Safety	Prohibits imports of bovine products from countries with reports of one or more indigenous cases of BSE.
	SPS	Pork	Animal Health	Imports of U.S. pork limited to frozen, boneless pork due to concerns about porcine reproductive and respiratory syndrome (PRRS) and post-weaning multi-systemic wasting syndrome (PMWS).
	SPS	Poultry	Animal Health	Limits imports of U.S. fresh, frozen, and cooked turkey meat due to concerns about various risks.
	SPS	Apples	Plant Health	Prohibits U.S. apples due to concerns about fire blight, which can infect apples, pears, and other rosaceous plants.
	SPS	Stone Fruit	Plant Health	Prohibits U.S. stone fruit (peaches, nectarines, plums, and apricots) due to concerns about certain plant pests.
	SPS	Table Grapes	Plant Health	One Australian state, Western Australia, continues to prohibit imports of U.S. table grapes.
Bahrain	SPS	Pork	Food Safety	Prohibits imports of U.S. pork due to concerns about H1N1 "Swine Flu" virus.
Bolivia	SPS	Live Cattle, Beef	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
Bosnia	SPS	Various Products	Biotechnology	Prohibits imports of genetically engineered (GE) products.
Brazil	SPS	Live Cattle, Beef	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
	SPS	Pork	Food Safety	U.S. pork products are only allowed from plants that Brazil's inspectors have individually inspected and approved.
	SPS	Planting Seeds	Plant Health	Requires treatment and testing of many seed species to import into Brazil.
Chile	SPS	Live Cattle	Food Safety	Prohibits U.S. live cattle due to BSE-related concerns.
	SPS	Pork	Food Safety	U.S. pork products must be shipped frozen or tested for trichinosis.
	SPS	Salmonid Eggs	Food Safety	Requires risk analysis and on-site APHIS oversight of aquatic animal exports and U.S. salmonid egg production sites.
	TBT	Various Products	Labeling, Registration	Imposes certain labeling requirements regarding foods that are high in fat, sugar, calories, or salt.

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
China	SPS	Various Products	Biotechnology	Requires biotech-derived products developed in a foreign country to first be approved for use in that country before Chinese authorities will consider approving the product for use in China.
	SPS	Pork	Food Safety	Bans pork imports containing any residue of ractopamine, a veterinary drug.
	SPS	Live Cattle, Beef	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
	SPS	Meat and Poultry	Food Safety	Imposes a zero tolerance limit for *Salmonella, Listeria*, and other pathogens in imported raw meat and poultry.
	SPS	Processed Meat Products	Food Safety	Imports of U.S. processed meat products (sausages and rendered chicken fat) have been detained without notifying U.S. authorities, citing application of U.S. equivalence agreement regarding (unprocessed) meat products.
	SPS	Animal Feed	Animal Health	Requires foreign regulatory agencies to maintain a list of facilities approved to export feed products, requiring plant-by-plant audits, and requiring manufacturers to provide proprietary information, including photos of facilities.
	SPS	Bovine Products	Animal Health	Prohibits U.S. protein-free tallow because of BSE concerns; also requires compliance with certain requirements.
	SPS	Poultry	Animal Health	Prohibits U.S. products from three states (AR, MN, VA) due to low pathogenic avian influenza (LPAI) concerns.
	SPS	Apples	Plant Health	Allows only two varieties of U.S.-origin apples from three states (ID, OR, WA) due to concerns about fire blight.
	SPS	Potatoes	Plant Health	Prohibits imports of U.S.-origin table stock potatoes based on concerns over various plant pests and diseases.
	SPS	Strawberries	Plant Health	A decision is pending regarding permanent market access to China for California strawberries.
	TBT	Food Additives	Formula Disclosure	Requires foreign food producers to disclose their proprietary food additive formulas on product labels.
Colombia	SPS	Poultry	Food Safety	Imposes a zero tolerance standard for *Salmonella* on imported raw poultry products.
	SPS	Live Cattle	Animal Health	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
	SPS	Pork	Animal Health	U.S. pork products must be shipped frozen or tested for trichinosis.
Croatia	SPS	Food Products	Biotechnology	Prohibits import of all food products that contain even trace amounts of food products derived from biotechnology.
Dominican Rep.	SPS	Beef, Beef Products	Food Safety	Prohibits U.S. beef and beef products from cattle 30 months of age and over due to concerns about BSE.
Ecuador	SPS	Live Cattle, Beef	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
Egypt	SPS	Animal Products	Food Safety	Imposes European Union (EU) regulations established by regarding Maximum Residue Limits (MRLs) for veterinary products, including growth-promoting hormones.
	SPS	Seed Potatoes	Plant Health	Prohibits most varieties of U.S. seed potatoes due to concerns about *Ralstonia* (brown rot); registered varieties must undergo mandatory field trials for three seasons and comply with other plant quarantine conditions.

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
Egypt	SPS	Wheat	Plant Health	Imposes a zero tolerance policy for the presence of *Ambrosia* (ragweed) in wheat imports, although one or more varieties of *Ambrosia* are present in all major wheat exporting countries, including in Egypt.
	SPS	Cotton	Plant Health	Requires inspection by Egyptian authorities prior to shipment.
El Salvador	SPS	Rice	Plant Health	Enforces regulations for rough rice that requires an additional declaration that shipments are free of weeds.
Ethiopia	SPS	Various Products	Biotechnology	Implementing a biosafety law that may require documentation and testing of products derived from biotechnology.
European Union	SPS	Various Products	Biotechnology	Enforces policies restricting imports of products derived from agricultural biotechnology; requires prior approval for a specific use before a product may be imported or used. Several EU countries have biotech-free strategies.
	SPS	Beef, Beef Products	Food Safety	Prohibits U.S. beef raised with growth-promoting hormones.
	SPS	Beef and Poultry	Food Safety	Restricts use of "pathogen reduction treatments" (PRTs), designed to reduce the amount of microbes on the meat.
	SPS	Cherries	Food Safety	Requires imported cherries be free of *Monilinia fructicola* (brown rot); requires documentation of field controls.
	SPS	Pork	Food Safety	U.S. pork exporters must verify (and undergo lab testing) that the pork has not been produced using ractopamine.
	SPS	Seafood	Food Safety	Prohibits imports of all U.S.-origin molluscan shellfish other than scallops.
	SPS	Animal By-Products (tallow)	Animal Health	Prohibits U.S. tallow not intended for human consumption, including tallow-containing products, such as pet food and ingredients containing protein-free tallow, and tallow for livestock consumption and other technical uses.
	SPS	Milk	Animal Health	Limits the somatic cell count in milk (below U.S. levels) as part of its public health requirements for dairy imports.
	TBT	Wine	Labeling	Imposes detailed rules regarding designations of origin and geographical indication, traditional terms, and labeling.
	TBT	Honey	Biotech Labeling	Requires honey containing pollen derived from GE crops to be labeled as such according to EU regulations.
	TBT	Food Products	Food Quality	New food quality scheme requires verified certification procedures and labeling systems subject to official controls.
India	SPS	Dairy Products	Food Safety	Requires certification that U.S.-origin milk has been treated to ensure the destruction of paratuberculosis.
	SPS	Pork	Food Safety	Requires certification that imported pork does not contain any residues of pesticides, veterinary drugs, mycotoxins, or other chemicals above the internationally prescribed MRLs. Limits U.S. pork imports to meat derived from animals that were never fed ruminant derived protein, requires animal health attestations, plus extra inspections. Certificates valid for only six months; also separate permits are needed for each lot.
	SPS	Meat Products	Animal Health	Prohibits imports of U.S. poultry, swine, and related products (pet food) due to LPAI outbreaks in the United States.
	SPS	Wheat and Barley	Plant Health	Imposes zero-tolerance standards for certain plant quarantine pests, such as weed seeds and ergot.

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
India	TBT	Food Products	Biotech Labeling	Prohibits imports of food and agricultural products containing ingredients derived from biotech crops such as corn and soybeans (except soybean oil).
Indonesia	SPS	Beef and Pork	Food Safety	Does not recognize equivalence of U.S. inspection system; requires questionnaire with proprietary information.
	SPS	Animal Products	Food Safety	Allows imports only from facilities that the Indonesian authorities have individually audited and approved.
	TBT	Horticulture Prods.	Labeling	Regulations impose a range of requirements on imported horticultural products, including labeling requirements.
	TBT	Processed Food	Labeling	Requires imports be labeled exclusively in the Bahasa language; require labels on product containers before shipped.
	TBT	Food (Supplements, Drugs, Cosmetics)	Distribution License Requirements	Requirements for distributors of imported products (e.g., reference letters from the overseas production facility, certifications for health or halal status, certificate that the production process for the product was radiation free).
Israel	SPS	Live Cattle, Beef	Animal Health	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
	SPS	Apples and Pears	Plant Health	Imposes cold treatment requirements to mitigate the risks of two pests, the apple maggot and the plum curculio.
	SPS	Cherries	Plant Health	Prohibits U.S. sweet cherries, citing various plant pests and diseases of concern.
Jamaica	SPS	Pork	Animal Health	Prohibits imports of U.S. pork due to concerns about pseudorabies, a viral disease that can affect swine.
Japan	SPS	Live Cattle, Beef	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
	SPS	Food Additives	Food Safety	Regulates food additives, restricting imports of several U.S. food products, especially processed foods.
	SPS	Gelatin	Food Safety	Restricts U.S.-origin ruminant gelatin and collagen for human consumption, related to BSE concerns.
	SPS	Fungicides	Food Safety	Requires separate risk assessments for both pre-harvest and post-harvest application of a fungicide.
	SPS	Maximum Residue Limits (MRLs)	Food Safety	Requires industry-wide enhanced surveillance for a given product after a single MRL violation; also, Japan's review process to approve pesticides and fungicides and the lack of established MRLs continue to create trade disruptions.
	SPS	Poultry	Animal Health	Requires U.S. poultry meat and egg products be exported under a protocol aimed at preventing avian influenza (AI).
	SPS	Fresh and Chipping Potatoes	Plant Health	Limits U.S. fresh potato imports from certain states to produce potato chips, and limits shipments to a single chipping facility over a specific shipping period of just five months (February to June), due to phytosanitary concerns.
	SPS	Cherry Varieties	Plant Health	Restricts imports to fresh cherry varieties subject to either fumigation treatment or a systems approach of controls.
	TBT	Certified-Organic Products	Certification, Requirements	Organic labeling requirements impose a zero tolerance policy for pesticide/herbicide residues on organic products, among other requirements. Will not certify products made with alkali extracted humic acid or lignin sulfonate.
Kazakhstan	SPS	Food Products	Systemic Issues	Requires veterinary, phytosanitary, and sanitary-epidemiological control at the customs border under unified epidemiological and hygienic requirements and also a single form of documentation used to confirm product safety.

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
Kazakhstan	SPS	Various Products	Biotechnology	Considering a draft law to regulate the development and testing of biotechnology products, including labeling.
	SPS	Live Cattle	Food Safety	Bans imports of U.S. cattle due to bluetongue disease, following detection in a shipment of cattle in December 2012.
	SPS	Pork	Food Safety	Requires imported pork to be shipped frozen to mitigate the risk of trichinae.
Kenya	SPS	Various Products	Biotechnology	Under presidential decree, bans imports of food and feed imports derived from biotechnology.
Kuwait	SPS	Beef, Beef Products	Food Safety	Prohibits all live cattle and beef from Oklahoma due to BSE-related concerns.
Kyrgyzstan	SPS	Pork	Food Safety	Prohibits U.S pork exports from several U.S. states due to concerns regarding the H1N1 virus (swine flu).
Macedonia	SPS	Pork	Food Safety	Stopped accepting USDA Food Safety Inspection Service (FSIS) meat inspection system as equivalent.
Malaysia	SPS	Food Products	Food Safety	Stopped issuing import permits for U.S. frozen and chilled pork; issued new requirements with a lengthy application.
	TBT	Meat and Poultry	Halal Standards	Requires all meat (except pork) be certified as halal (produced in accordance with Islamic practices).
Mexico	SPS	Live Cattle, Beef	Food Safety	Bans products from cattle >30 months, but allows imports of U.S. beef from animals <30 months of age.
	SPS	Fresh Potatoes	Plant Health	Prohibits U.S. potatoes shipped beyond a 26-km zone along the U.S.-Mexico border due to nematode concerns.
	SPS	Stone Fruit	Plant Health	U.S. peach, nectarine, and apricot growers are affected by Mexico's controls for oriental fruit moth and other pests.
Morocco	SPS	Live Cattle, Beef and Poultry Products	Food Safety and Animal Health	Restricts imports of U.S. live cattle, beef, and beef products due to concerns over BSE and growth hormones, and restricts imports of U.S. poultry and poultry products due to AI and *Salmonella* concerns.
New Zealand	SPS	Pork	Animal Health	Restricts imports of fresh U.S. pork in consumer-ready form due to concern about porcine reproductive and respiratory syndrome (PRRS).
Nicaragua	SPS	Poultry	Food Safety	Regulations require a zero tolerance standard for *Salmonella* on poultry meat.
Norway	SPS	Various Products	Biotechnology	With limited exceptions, effectively bans the importation of agricultural biotechnology products.
	SPS	Beef, Beef Products	Food Safety	Applies EU regulations that ban imports of meat from animals treated with growth hormones.
Peru	SPS	Biotech products	Biotechnology	Enacted, in 2011, a 10-year moratorium on imports and production of genetically engineered products and animals.
	SPS	Pork	Food Safety	Requires U.S. pork be shipped to its market either frozen or tested due to concern over trichinae.
	SPS	Live Cattle	Animal Health	Prohibits U.S. live cattle due to BSE-related concerns.
Philippines	SPS	Vegetables	Plant Health	Requires lengthy Pest Risk Assessments (PRAs) for fresh fruits and vegetables.

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
Russia	SPS	Agricultural Products	Systemic Issues	Requires export certificates for products, including processed agricultural products (e.g., soybean proteins, corn gluten, and distiller's grains) and requests certifications stating the U.S. is free from various livestock diseases.
Russia	SPS	Veterinary Certificates	Systemic Issues	Requires veterinary certificates to include broad statements by U.S. officials that the products satisfy Russia's sanitary and veterinary requirements, including meeting certain chemical, microbiological, and radiological standards.
	SPS	Various Products	Biotechnology	Requires approval of GE foods and feed products, including re-registration of approved products, labeling of GE products; does not provide for an approved system to cultivate GE crops.
	SPS	Tolerances	Food Safety	Maintains a zero tolerance policy (*Salmonella, Listeria*, and coliforms) in food products, including raw meat/poultry.
	SPS	Veterinary Drugs	Food Safety	Maintains zero tolerances for residues of unapproved veterinary drugs, which are commonly used in United States.
	SPS	Beef, Beef Products	Food Safety	Requires BSE attestations for prepared meat effectively precluding imports of any U.S. cooked beef; prohibits imports of ground beef from cattle of any age.
	SPS	Dairy	Food Safety	Allows shipments only from exporters approved by Russia's veterinary and phytosanitary surveillance agency.
	SPS	Pork, Pork Products	Food Safety	Maintains near-zero tolerance levels for tetracycline-group antibiotics; requires U.S. pork be frozen or tested.
	SPS	Poultry	Food Safety	Prohibits importation/sale of chlorine-treated chicken, and places an upper limit on the amount of water content in chilled and frozen chicken; bans the importation/sale of certain frozen poultry for use in baby food and special diets.
	SPS	Grains and Oilseeds	Animal Health	Requires U.S. grain and oilseed products for use in animal feed be certified free of animal diseases.
	SPS	Pet Food, Feed	Animal Health	Prohibits use of most ruminant-origin ingredient in pet foods and animal feed due to BSE concerns.
	TBT	Various Products	Food labeling	Imposes labeling requirements, including information regarding nutritional components, allergens, and GE products.
Saudi Arabia	SPS	Beef, Beef Products	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
Serbia	SPS	Various Products	Biotechnology	Prohibits imports of food products that contain trace amounts of agricultural biotechnology.
Singapore	SPS	Beef, Beef Products	Food Safety	Prohibits imports of U.S. beef products, except deboned beef from animals under 30 months, due to BSE concerns.
	SPS	Pork	Food Safety	Prohibits the use of all PRTs in the production of pork and pork products.
South Africa	SPS	Beef/Beef Products	Food Safety	Prohibits imports of beef cuts and products (except U.S. deboned beef), and other ruminant animals and products.
	SPS	Pork	Animal Health	Enforces various requirements including a 20-day freezing requirement to prevent the transmission of pseudorabies.
	SPS	Table Grapes	Plant Health	Limits imports of California grapes due to pest concerns (European grapevine moth and Light Brown Apple Moth).
South African Devel. Comm.	SPS	Various Products	Biotechnology	South African Development Community (covering 15 member states) bans the importation of agricultural biotechnology products (since 2005).

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
South Korea	SPS	Various Products	Biotechnology	Regulates trade in agricultural biotech products, including food and seeds for use as feed or for processing.
South Korea	SPS	Beef, Beef Products	Food Safety	Limits U.S. exports to beef and beef products from cattle less than 30 months of age.
	SPS	Max. Residue Limits	Food Safety	Enforces a national MRL list and a complex deferral approval process.
	SPS	Cherries	Plant Health	Requires U.S. cherries to undergo fumigation with methyl bromide before shipping to control quarantine pests.
	TBT	Certified Organic Foods	Requirements and Conformity Issues	Products claiming to be organic must be certified by Korea's Ministry for Food, Agriculture, Forestry and Fisheries (MIFAFF); imposes certification and accreditation requirements, including zero tolerance for some materials.
Sri Lanka	SPS	Various Products	Biotechnology	Prohibits sale of biotech seeds or products for human consumption unless approved by the Chief Food Authority.
	SPS	Beef, Beef Products	Food Safety	Prohibits U.S. bovine products, including beef, beef products, and beef genetics, due to BSE-related concerns.
Taiwan	SPS	Beef, Beef Products	Food Safety	Prohibits U.S. beef, and beef products due to BSE-related concerns.
	SPS	Pork/Beef Products	Food Safety	Delayed implementation of its proposed MRLs for ractopamine for both swine and cattle-derived products.
	SPS	Max. Residue Limits	Food Safety	MRL process for pesticides has resulted in a substantial application backlog and exporter uncertainty.
	SPS	Animal and Pet Feed	Animal Health	Bans imports of all ruminant-origin and many non-ruminant-origin ingredients intended for use in animal feed and pet food, such as tallow (including protein-free tallow), lard, and porcine meal, due to BSE-related concerns.
	SPS	Apples	Plant Health	Imposes a strict "three strikes" penalty structure for codling moth (CM) detections.
	SPS	Potatoes	Plant Health	Limits U.S. fresh potatoes to those grown in selected states (AK, CA, ID, OR, WA).
Thailand	SPS	Animal-derived Products	Food Safety	Prohibits imports of most ruminant-origin products and many non-ruminant origin products for use in pet foods or for livestock feed due to BSE-related concerns.
	SPS	Beef, Beef Products	Food Safety	Prohibits U.S. live cattle, beef, and beef products due to BSE-related concerns.
	SPS	Pork	Food Safety	Limits imports from countries that allow use of ractopamine, and has not yet established an MRL for ractopamine.
	SPS	Various Products	Food Safety	Imposes food safety inspection fees in the form of import permit fees on all shipments of cooked meat.
Turkey	SPS	Various Products	Biotechnology	Biosafety Law negates approvals of biotech products (e.g., soy and corn products) allowed under previous rules.
	SPS	Meat	Food Safety	Restricts U.S. beef and beef products, plus cattle and sheep for feeding and slaughter.
	TBT	Food/Feed Products	Biotech Labeling	Mandated labeling of ingredients derived from biotechnology in all food and feed if exceeds a certain threshold level.
Ukraine	SPS	Various Products	Biotechnology	Maintains a framework regarding the creation, testing, and use of products of agricultural biotechnology.
	SPS	Pork	Food Safety	Requires U.S. pork to be shipped frozen or tested for trichinosis.

U.S. Trading Partner	SPS/ TBT	Food Product Category	SPS/TBT Category	U.S. Concerns
Uruguay	SPS	Live Cattle, Beef	Food Safety	Restricts U.S. live cattle, beef and beef products, due to BSE concerns.
	SPS	Poultry	Animal Health	Bans imports of many U.S. poultry products due to concerns about avian influenza (AI) and Newcastle's disease.
	SPS	Potatoes	Plant Health	Enforces an optional pre-sampling protocol for U.S. exporters of U.S. seed potatoes, due to powdery scab concerns.
Vietnam	SPS	Food Products	General	Imposes a comprehensive food safety law covering regulations for a wide variety of horticultural, seafood, and meat products, which applies to both foreign and domestic producers.
	SPS	Beef, Beef Products	Food Safety	Restricts U.S. beef and beef products, except for products from cattle less than 30 months old.
	SPS	Offal	Food Safety	Bans offal products from all countries.
	SPS	Animal Products	Food Safety	Requires extensive information on individual facilities where food is produced to be eligible to export to Vietnam.
	SPS	Plant Products	Food Safety	Regulations on imported goods regarding exporter registration requirements, sampling rates, and MRLs.
	TBT	Processed Foods	Food Safety	Requires manufacturers of prepackaged processed foods, food additives, and food packing materials register, certify, and obtain affirmation of a product's conformity to Vietnam's food safety laws and regulations.

Source: USTR, *2013 Report on Sanitary and Phytosanitary Measures* (http://www.ustr.gov/sites/default/files/2013%20SPS.pdf) and *2013 Report on Technical Barriers to Trade* (http://www.ustr.gov/sites/default/files/2013%20TBT.pdf).

Notes: Generally excludes non-agricultural products, and does not include cosmetics and body care products, as well as most alcoholic beverages (exclude distilled spirits but includes some wine products).

Appendix B. Key Principles and Provisions of the SPS Agreement[151]

Basic Rights and Obligations: (Articles 1 and 2, Annex A) Members have the right to take SPS measures "necessary for the protection of human, animal, or plant life or health," as long as they are not inconsistent with the language of the SPS Agreement, are "based on scientific principles," "not maintained without sufficient scientific evidence," "do not arbitrarily or unjustifiably discriminate ... ," and are "not applied in a manner which would constitute a disguised restriction on international trade" (excerpts from Article 2). Members could have SPS measures that result in a higher level of protection than relevant international standards, but only if based on scientific justification (Article 3.3) or a risk assessment (Articles 2.3 and 5).

Harmonization: (Article 3) To facilitate trade, countries are encouraged (but not required) to use relevant international standards and work toward harmonization—that is, the adoption of common SPS measures. To promote harmonization, the agreement cites, as sources of scientific expertise and globally recognized standards including Codex Alimentarius Commission for food safety; World Organization for Animal Health (OIE) for animal health and diseases; and International Plant Protection Convention (IPPC) for plant health.

Equivalence: (Article 4) Equivalence means that each importing country must accept the SPS measures of another country as equivalent to its own (even if they are not exactly the same), as long as the exporting country objectively demonstrates to the importing country that its measures achieve the same level of protection.

Risk Assessment: (Articles 2 and 5) SPS measures must be based on a risk assessment taking into account internationally recognized risk assessment techniques, scientific principles and sufficient scientific evidence, while also minimizing trade distortions. SPS measures must be no more trade restrictive than necessary to achieve a country's appropriate level of SPS protection, and "shall avoid arbitrary or unjustifiable distinctions in the levels" considered to be appropriate, if such distinctions result in "discrimination or a disguised restriction on international trade." Countries may adopt a provisional measure to avoid risk, but must seek information and conduct a risk assessment to justify permanent use of a measure that might restrict trade.

Notification and Transparency: (Article 7, Annex B) Requires countries to publish its regulations related to SPS controls and to notify its trading partners in advance about measures that could affect trade. Countries must also provide an "Enquiry Point" to respond to questions about, and provide comments on, new or existing SPS measures. Member governments must report trade measures to the relevant WTO body if the measures might have an effect on other members.

Within the WTO, the SPS Information Management System (SPS IMS, http://spsims.wto.org/) provides access to documents and records relevant under the SPS Agreement, and allows users to track: information on SPS measures that member governments have notified to the WTO; specific trade concerns raised in the SPS Committee; SPS-related documents circulated at the WTO; member governments' SPS Enquiry Points and Notification Authorities; and the membership of the WTO, Codex, IPPC, and the OIE.

Regionalization: (Article 6) Provides for adaptation to regional conditions, including pest or disease free areas and areas of low pest or disease prevalence. Previously, a country tended to ban

[151] Compiled by CRS from various sources, including text of the SPS agreement can be accessed through WTO's website. Also see J.C. Buzby, ed., *International Trade and Food Safety,* AER Report 828, USDA, November 2003.

an entire country's exports (of a product) from entry, if that product was associated with an unwanted pest or disease in the exporting country.

Dispute Settlement: (Article 11) Provides for formal consultations and the settlement of disputes involving scientific or technical issues, as well as adjudication by a WTO dispute settlement panel, if required. When a dispute arises, a panel seeks advice from experts, an advisory technical experts group, or relevant international organizations, at the request of either party to the dispute or on its own initiative. Decisions by a WTO panel may be appealed to the WTO Appellate Body.

Implementation and Oversight: (Articles 12 and 13, Annex C) Establishes a Committee on Sanitary and Phytosanitary Measures to provide a regular forum for consultations and information exchange, to periodically review implementation of the agreement and governments' compliance with it, to monitor progress in global harmonization of standards, and to work closely with the appropriate technical organizations on SPS matters. The SPS committee meets 3-4 times per year to discuss trade disputes related to SPS measures on an ongoing basis.

Appendix C. Key Principles and Provisions of the TBT Agreement[152]

Non-discrimination and Avoiding Unnecessary Obstacles to Trade: (Articles 2, 5.1, and 5.2) Products imported from a Member country shall "be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country." (Article 2.1) Members must ensure that "conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favorable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation" (Article 5.1.1). Related fees must be equitable (Article 5.2.5) and also respect the confidentiality of information about the results of conformity assessment procedures for imported products in the same way they do for domestic products (Article 5.2.4). Member countries must ensure that the technical regulation is not more trade-restrictive than necessary to fulfill the Member's legitimate objective. (Article 2.2) The obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures, which must not be stricter than necessary to provide adequate confidence that products conform to the applicable requirements. (Article 5.1.2)

Alignment and Equivalency: (Articles 2.4, 2.6, and 2.7; also 5.4 and 5.5) Members should use relevant international standards, or the relevant parts of them, as a basis for their technical regulations, as well as relevant international recommendations and guides, or relevant portions of them, as the basis for their conformity assessment procedures (unless they would be ineffective or inappropriate to fulfill the Member's "legitimate objectives") (Articles 2.4 and 5.4). Members should also participate "within the limits of their resources" in the preparation by international standardization bodies, of international standards for products for which they either have adopted, or expect to adopt, technical regulation, and in the elaboration of international guides and recommendations for conformity assessment procedures (Articles 2.6 and 5.5). Members are encouraged to accept technical regulations that other Members adopt as "equivalent" to their own if these regulations adequately fulfill the objectives of their own regulations. (Article 2.7)

Performance-based Requirements: (Article 2.8) Whenever appropriate, product requirements should be set in terms of performance rather than design or descriptive characteristics.

Conformity Assessments: (Articles 9.1, 6.1 and 6.3) Members shall, whenever practicable, formulate and adopt international systems for conformity assessment (Article 9.1). Members must recognize "whenever possible" the results of conformity assessment procedures (e.g., test results or certifications), provided the Member is satisfied that those procedures offer an assurance of conformity that is equivalent as its own, which may require consultation (Article 6.1). Members are encouraged to enter into "mutual recognition agreements" or MRA providing for the mutual recognition of each other's conformity assessment results (Article 6.3).

Transparency: (Articles 2.9 and 2.11; 5.6 and 5.8, 10.1, Annex 3) Members must notify other Members through the WTO Secretariat when it proposes to adopt a technical regulation or conformity assessment procedure and to include in the notification a brief indication of the purpose of the proposed measure (regarding international standard, guide, or recommendation that does not exist or the technical content of a proposed technical regulation or conformity assessment procedure that is not in accordance with the technical content of relevant international

[152] Compiled by CRS from various sources, including USTR, *2013 Report on Technical Barriers to Trade*. Text of the TBT agreement can be accessed through WTO's website.

standards, guides, or recommendations). Certain requirements apply regarding "reasonable time," codes of practice, and addressing all reasonable questions, among other things.

Technical Assistance: (Article 11) Members should provide technical assistance to other Members with respect to such matters as preparing technical regulations, establishing national standardizing bodies, participating in international standardization bodies, and establishing bodies to assess conformity with technical regulations.

Enforcement and Dispute Settlement: (Article 13 and 14) Establishes the Committee on TBT as the major forum for WTO Members to consult on matters relating to the operation of the Agreement, including specific trade concerns about measures that Members have proposed or adopted (Article 13) and provides for dispute resolution under the WTO and in accordance with the WTO's Dispute Settlement Understanding (Article 14).

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